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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1916.

No. 741.

THE UNITED STATES

vs.

BESSIE WILDCAT, A MINOR, ET AL.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT.

**BRIEF AMICUS CURIAE ON BEHALF OF THE CREEK
NATION.**

Preliminary Statement.

May it please the court:

The statement of this case by the United States Circuit Court of Appeals for the Eighth Circuit in certifying the three questions of law involved in the case, concerning which the members of that court have requested the instruction of this court for their proper decision, is so clear, concise, fair, and impartial, that counsel for the Creek Nation will not undertake to make a further statement of the facts herein, except as it may be necessary in connection with the discussion of the various propositions of law involved.

ARGUMENT AND BRIEF.

The first and second questions certified to this court are

1st. Should the evidence offered by the Government to show that Thlocco died prior to April 1, 1899, have been admitted?

2d. Should the evidence offered by the Government to show that Thlocco's enrollment was cancelled by the Dawes Commission have been admitted?

The learned solicitor general has filed an able and exhaustive brief in which, it seems to counsel, reason and the authorities are overwhelmingly in favor of the contention he makes, and compels an affirmative answer to these questions. We will, therefore, for the present, pass to the third question.

3d. Were the certificates of allotment and deeds to Thlocco null and void because he was dead at the time they were made?

The above and foregoing was the third question certified by the Court of Appeals to the Supreme Court for instructions as to its proper decision.

On the trial of the case in the District Court, the Government offered to prove that Thlocco died in the latter part of January, 1899. To the introduction of this testimony the defendants objected. The court sustained the objection and denied the Government the right to make proof of the facts recited in the offer (Tr., pp. 64, 65, 66, 111, and 112). The action of the court in so ruling is assigned as error (Assignments of error XXI, XXII, Tr., pp. 126, 127, and 128).

The name of Barney Thlocco appears on the approved roll of the Creek Nation opposite roll No. 8592, on card No. 3021, field No. 3456. The census card shows that this name

was listed for enrollment May 24, 1901, and that the enrollment thereof was approved by the Secretary of the Interior May 28, 1902.

On June 30, 1902, the Dawes Commission, acting upon the resolution of the Commission adopted May 24, 1902 (Tr., pp. 45 and 46), issued a certificate of allotment in the name of Barney Thlocco, setting apart to him the northwest quarter (N. W. $\frac{1}{4}$) of section nine (9), township eighteen (18) north, range seven (7) east, containing one hundred and sixty (160) acres, and, from this one hundred and sixty (160) acre tract, setting apart the southeast quarter (S. E. $\frac{1}{4}$) of the northwest quarter (N. W. $\frac{1}{4}$) as his homestead.

Homestead and allotment deeds, duly executed by the Principal Chief of the Creek Nation, dated March 11, 1903, and approved by the Secretary of the Interior April 3, 1903, were issued in the name of Barney Thlocco conveying the land described in the certificate.

These deeds were filed for record in the office of the Commission and were then handed to the Principal Chief of the Creek Nation for delivery, but a question having subsequently arisen as to whether or not Barney Thlocco was entitled to allotment, the Commission recalled the deeds from the possession of the chief and placed them on file in its office where they have since remained, and now remain. There has, therefore, never been any actual delivery of the deeds to any person whomsoever.

The Government offered to show that, upon motion filed by the attorney for the Creek Nation, the enrollment of the name of Barney Thlocco was reopened, by the Commission for further hearing and consideration, at the direction of the Secretary of the Interior; that, at the hearing before the Commission, evidence was offered for the purpose of showing that Barney Thlocco died prior to April 1, 1899, and that the Commission thereupon recommended that it be given authority, by the Secretary of the Interior, to strike

the name from the approved roll; that the Secretary approved the recommendation of the Commission in that respect, and pursuant thereto the enrollment of the name of Barney Thlocco was cancelled. To this offer the defendants interposed an objection which the court sustained (Tr., pp. 51-62).

The name of Barney Thlocco was listed for enrollment by a field party at the town of Okmulgee. No application for the enrollment was presented to the Commission, nor does it appear upon what evidence, if any, the enrollment was made.

By the act of March 1, 1901, it is provided:

"All citizens who were living on the first day of April, eighteen hundred and ninety-nine, entitled to be enrolled under section twenty-one of the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled 'An act for the protection of the people of the Indian Territory, and for other purposes,' shall be placed upon the rolls to be made by said Commission under said act of Congress, and if any such citizen has died since that time, or may hereafter die, before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly."

This section provides for an allotment to a *living* citizen and to the *heirs* of one who had been a citizen. Nowhere in the acts of Congress relating to the Five Civilized Tribes can be found provision for an allotment to a *deceased citizen*. The provision is for the allotment and distribution to the *heirs* of the deceased citizen. Presumably the act was so worded in recognition of the rule that the title to real estate must rest in some living person. If the deed fails of a grantee *in being*, no title is thereby conveyed.

In *Tiffany on Real Property* (Ed., 1903) section 380, it is said:

"A conveyance to a deceased person is invalid, but a conveyance to the heirs of one deceased is sufficient, since their identity can be determined."

In *Jones on the Law of Real Property*, section 223, it is said:

"The grantee must be in existence and capable of taking at the time of the grant. This was essential at common law because otherwise there could be no livery of seisin. A grantee is as necessary to the validity of a grant as that there should be grantor or a thing granted. Thus a conveyance to such children as may afterwards be born to persons named, is inoperative and vests no title in after-born children of such persons. A deed to a person not living at the time of its execution and his heirs, is void, there being no person to take under it as the word 'heirs' is a word of limitation and not of purchase; but a deed to a person named or his heirs, is not void, for it is a conveyance to such person, if living, and if he is not living, to his heirs. It is a deed in the alternative. A deed to the heirs of a person deceased is valid because the person entitled to take can be ascertained by parole evidence."

That delivery is essential to the validity of patents was held by Mr. F. L. Campbell, in an opinion prepared for the Secretary of the Interior, dated August 20, 1903 (File I. T. D. 5908-1903), when Assistant Attorney General for the Department of the Interior, as follows:

"The proper practice in conveying allotted lands where the allottee has died prior to conveyance, in my opinion, is to make the deed run to 'the heirs of' the allottee, naming the decedent. A patent or grant to a deceased person is void at law."

Citing in support thereof the cases of *Galloway vs. Findley* (12 Pet., 264-298), *Davenport vs. Lamb* (13 Wall.,

418-427), *McCrackens' Heirs vs. Beall* (3 A. K. Marsh, Kv., 210), *Hunter vs. Watson* (12 Cal., 363-73, Am. Dec., 543).

Under this construction of the law deeds theretofore issued to deceased persons were cancelled and new deeds issued to the heirs. (See opinion of Assistant Attorney General, dated August 20, 1903, Appendix. Letter from the Dawes Commission, transmitting names of 484 persons, appendix.)

In the Creek allotment contest case of *Major vs. Thompson*, decided by the Secretary of the Interior in an opinion rendered February 18, 1904 (I. T. D., 6752, 1903), found on page 193 of the report of the Commission for the year ending June 30, 1904, the Secretary said:

"The acceptance of the deed has the effect of the execution and delivery of a deed of release of the allottee's interest in the other communal lands allotted to others of the tribe, like the voluntary deed in partition of one of several common owners. This makes acceptance of the deed a part of the transaction of partition or allotment of the communal property in severalty to the individual members of the communal owners. Such deed is therefore not the equivalent of a patent by the United States to public lands. The individual entryman has no interest in the mass of public lands, and has nothing therein to release. At or before the time of the final entry he renders the full consideration of the land he seeks to acquire, and his assent to the passing of legal title to him is completed at the instant of the final entry. The patent when issued relates to that date, though issued long afterwards. The issue and record of the patent vest legal title, whether it is delivered or not (*United States vs. Schurz*, 102 U. S., 378). But the nature of Indian titles and effect given by the statute to the delivery and acceptance of the tribal deed make the doctrine of that case clearly inapplicable to allotment deeds."

In *Hunter vs. Watson*, *supra*, the court said:

"The deed of 1856 may be laid out of the question. It was made after the death of Knox, and although made to him and 'his heirs' the word heirs is not a word of purchase carrying title to the heir, but only qualifies the title of the grantee. A deed to a dead man is a nullity."

The case of the United States *vs. Hawkins et al.* (217 Fed., 11) is direct authority for the position taken by the Government in the instant case. In that case it was conclusively established that Chester Hawkins was born January 1, 1897, and died May 27, 1898. In 1904 his father appeared before the Commission and filed proof that Chester was living on the first day of April, 1899. The Commission accepted the proof as true, and admitted the name of Chester Hawkins to enrollment. Later the father made application for an allotment for Chester, and on the same day the Commission issued a certificate of allotment in the name of Chester Hawkins, and delivered it to his father. Afterwards homestead and allotment deeds were executed by the Principal Chief of the Creek Nation, and duly filed for record in the office of the Commission. On the 17th day of March, 1909, James and Ella Hawkins conveyed the property to E. S. Warner, as president of the Iowa Land & Trust Co., and on June 3, 1910, the latter executed and delivered an oil-and-gas lease thereon to L. C. Hivick and M. L. Seifred. The trial court found that the lessees of the Iowa Land & Trust Company were innocent purchasers, and there was a decree accordingly in their favor, from which the Government appealed. In passing on these facts in the Hawkins case, the Circuit Court of Appeals for the Eighth Circuit said:

"As we view the case, we do not think that it is one where the defense of innocent purchaser may be applied. Chester Hawkins having died before April 1, 1899, must be considered as having had no existence,

so far as being a citizen of the Creek Nation entitled to an allotment of land under any law of Congress. The patents issued by the Creek Nation ran to a person not in being, and therefore conveyed no title whatever. There being no ancestor entitled to an allotment of land, there was no land to which the heirs of Chester Hawkins were entitled. As we understand the Creek agreement, in cases where the ancestor dies before allotment, but after enrollment, the lands were to be conveyed directly to the heirs; therefore there was no pretense in this case that the heirs were seeking an allotment as representatives of a deceased ancestor: There can be no question but that the patents were void. The only question is as to whether a case is presented where under any circumstances an innocent purchaser of the land can be perfected. If no title passed from the Creek Nation, then the vendees of James and Ella Hawkins obtained no title, nor did the lessees of the Iowa Land & Trust Company."

* * * * *

And, again, in the same case, the same court said:

"We do not see how there can be any escape from this conclusion. The equitable doctrine of a *bona fide* purchaser without notice does not apply where there is a total absence of title in the vendor. The good faith of a purchaser cannot create a title where none exists. *Tiffany's Real Property*, 380 (Ed. 1903); *Jones' Law of Real Property*, 223; *Hunter vs. Watson*, 12 Cal., 363; 73 Am. Dec., 543. See also *Boone vs. Chiles*, 10 Pet., 177; 9 L. Ed., 388; *Vattier vs. Hine*, 7 Pet., 252; 8 L. Ed., 675; *Sampeyreac vs. United States*, 7 Pet., 222; 8 L. Ed., 665; *Lindblom vs. Rocks*, 146 Fed., 660; 77 C. C. A., 86; *Texas Lumber Mfg. Co. vs. Branch*, 60 Fed., 201; 8 C. C. A., 562; *Dodge vs. Briggs* (C. C.), 27 Fed., 160; *Oakley vs. Ballard*, Fed. Cas. No. 10,393.

"We are of the opinion that, as Chester Hawkins never had any existence so far as being entitled to an allotment of land is concerned, and having died prior to April 1, 1899, he was, so far as being an applicant for a patent to the land in controversy, a myth, and

that the language used by the Supreme Court in *Moffatt vs. United States*, 112 U. S., 31; 5 Sup. Ct., 14; 28 L. Ed. 263, is pertinent.

* * * * *

The case of *Moffatt vs. The United States* (112 U. S., 10) was a suit to cancel two patents of the United States, purporting to be issued to two persons, Phillip Quinlan and Eli Turner. It was sought to cancel the patents on the ground that Quinlan and Turner were fictitious and nonexistent.

The testimony established the truth of this ground, and there was a decree canceling the patents, but *Moffatt* and *Carr*, to whom the land patented had been transferred by a mesne conveyances, claimed to be innocent purchasers from the pretended patentees, and therefore entitled to ownership of the land on that account, and to be protected against the consequences of the fraudulent methods by which the patentees secured the issuance of the patents. From the decree in favor of the United States, *Moffatt* and *Carr* appealed, and this court, in passing on the case, said:

"The patents being issued to fictitious parties could not transfer the title, and no one could derive any right under a conveyance in the name of the supposed patentees. A patent to a fictitious person is, in legal effect, no more than a declaration that the Government thereby conveys the property to no one. There is, in such case, no room for the application of the doctrine that a subsequent *bona fide* purchaser is protected. A subsequent purchaser is bound to know whether there was, in fact, a patentee, a person once in being, and not a myth, and he will always be presumed to take his conveyance upon a knowledge of the truth in this respect. To the application of this doctrine of a *bona fide* purchaser there must be a genuine instrument having a legal existence, as well as one appearing on its face to pass the title. It cannot arise on a forged instrument or one executed to fictitious parties, that is, to no parties at all, however much deceived thereby the purchaser may be. Even in the case of negotiable instruments, where the doc-

trine is carried furthest for the protection of subsequent parties acquiring title to the paper, it cannot be invoked if the instrument be not genuine, or if it is executed without authority from its supposed maker. *Floyd's Acceptances*, 7 Wall., 667, 676; *Marsh vs. Fulton Co.*, 10 Wall., 683."

* * * * *

In his observations upon the majority opinion in the Hawkins case, Judge Hook said:

"I doubt that a deed or patent to a dead man is so utterly void that his heirs can convey no valid interest to an innocent purchaser. The ancient ceremony at the transfer of land, which required a living grantee, does not prevail in this country, and the rule based on it should give way. So much for the case of the lessees. In other respects I concur in the foregoing opinion."

In view of these observations by Judge Hook, there can be no mistake as to the meaning of the majority opinion handed down by Judge Carland. The issue in the case was as to whether or not an allotment certificate could lawfully be issued in favor of a Creek citizen who was concededly dead on May 27, 1898, and patents be issued thereafter in the name of such deceased citizen which would inure to the benefit of his heirs and so enable them to transfer a good title to the land thereby conveyed to an innocent purchaser. It will be noted that Judge Hook gives as his reason for his doubt that "the ancient ceremony at the transfer of land which required a living grantee does not prevail in this country and the rule based on it should give way."

It is true that anciently the transfer of land was accompanied by a certain ceremony which required a living grantee but which does not prevail in this country. I cannot agree with the learned judge, however, that the absence of a requirement of the ancient ceremony supersedes the necessity for the delivery of the written instrument now

required (except in rare instances), for the conveyance of title to land.

Under the feudal system the act of homage was required for the investiture of title, and this act did require a living grantee. The grantee did homage by "openly and humbly kneeling, being ungirt, uncovered, and holding up his hands both together between those of the Lord, who sate before him, and there professing, that 'he did become his man, from that day forth, of life and limb and earthly honor;' and then he received a kiss from his Lord" (Cooley's Blackstone, Vol. 1, p. 477).

By the common law livery of seisin was necessary to the investiture of title to corporeal hereditaments. This likewise required the presence of a living grantee. It was performed by the grantor and grantee going together upon the land to be conveyed, and there the grantor would, in the presence of witnesses, deliver to the grantee, all other persons being off of the land, "a clod or turf, or a twig or bough there growing, with words to this effect: I deliver these to you in the name of seisin of all the lands and tenelements contained in this deed" (Cooley's Blackstone, vol. 1, pp. 687 and 688).

In the reign of Charles II an act of parliament made invalid any grant of an interest in a freehold estate unless the grant was evidenced by a written instrument and signed by the grantor, or his lawfully authorized agent. Thereafterwards conveyances were required to be in writing, and in speaking of the essentials of such written deeds, Blackstone names writing and delivery as two of them, as follows:

"The deed must be written, or I presume printed, for it may be in any character or any language; but it must be upon paper or parchment. For if it be written on stone, board, linen, leather, or the like, it is no deed. Wood or stone may be more durable, and linen less liable to erasures; but writing on paper or parchment unites in itself, more perfectly than any other way, both these desirable qualities: for

there is nothing else so durable, and at the same time so little liable to alteration: nothing so secure from alteration, that is at the same time so durable. It must also have the regular stamps imposed on it by the several statutes for the increase of the public revenue: else it cannot be given in evidence. Formerly many conveyances were made by parol, or word of mouth only, without writing; but this giving a handle to a variety of frauds, the statute 29, Car. II. c. 3, enacts, that no lease-estate or interest in lands, tenements, or hereditaments, made by livery of seisin, or by parol only (except leases, not exceeding three years from the making of the real value), shall be looked upon as of greater force than a lease or estate at will; nor shall any assignment, grant, or surrender of any interest in any freehold hereditaments be valid; unless in both cases the same be put in writing, and signed by the party granting, or his agent lawfully authorized in writing."

(Cooley's Blackstone, vol. I, p. 672.)

And again:

"A requisite to a good deed is, that it be delivered by the party himself or his certain attorney, which therefore is also expressed in the attestation; 'sealed and delivered.' A deed takes effect only from this tradition or delivery: for if the date be false or impossible, the delivery ascertains the time of it. And if any person seals the deed, yet if the party delivers it himself, he thereby adopts the sealing, and by a parity of reason the signing also, and makes them both his own. A delivery may be either absolute, that is, to the party or grantee himself; or to a third person, to hold till some conditions be performed on the part of the grantee: in which last case it is not delivered as a deed, but as an escrow; that is, as a scroll or writing, which is not to take effect as a deed till the conditions be performed; and then it is a deed to all intents and purposes."

(Cooley's Blackstone, vol. I, pp. 679 and 680.)

And again:

"Parties.—The first of which is, that there be persons able to contract and be contracted with for the purpose intended by the deed; and also a thing, or subject-matter to be contracted for; all which must be expressed by sufficient names. (f) So as in every grant there must be a grantor, a grantee, and a thing granted; in every lease a lessor, a lessee and a thing demised."

(Cooley's Blackstone, vol. I. p. 671.)

And again:

"Conveyances in writing were the last and most refined improvements. The mere delivery of possession, either actual or symbolical, depending on the ocular testimony and remembrance of the witnesses, was liable to be forgotten or misrepresented, and became frequently incapable of proof. * * * Written deeds were, therefore, introduced, in order to specify and perpetuate the peculiar purposes of the party who conveyed; yet, still, for a very long series of years, they were never made use of, but in company with the more ancient notorious method of transfer, by delivery or corporal possession."

(Cooley's Blackstone, vol. I. p. 686.)

It is true that the ancient ceremonial attendant upon, and required for, the transfer of real estate has passed away. It is equally true that it had passed away long before Blackstone wrote his treatise on the common law of England, although he states that for many years deeds were issued only in company with the ancient methods of transfer by delivery of corporal possession. Deeds were written, and were required by law to be written, at the time Blackstone wrote. It was a written deed, therefore, to which he was referring, when he stated that delivery was a requisite to a good deed. So continues to be the common law to this day, not only of deeds conveying real estate, but of any other written instrument creating an obligation.

If I sign a promissory note and keep it in my pocket, I have not created any obligation upon my part to pay the sum of money therein named to the payee. But if I deliver the promissory note to him, or to some person for him, the obligation to pay the amount of the note arises upon my part. So of a deed. If I prepare, sign and acknowledge a deed conveying my real estate, in anticipation of a possible business transaction, and keep it locked in my desk in my office, I have not divested myself of the title so long as the deed remains in my desk. If, however, I hand the deed to the grantee named in it, with intent to pass the title, the title passes from me to him. No difference in principle can be perceived between the deed of a private individual and a deed by the Creek Nation. The deeds issued in the name of Barney Thlocco, executed by the Principal Chief of the Creek Nation and approved by the Secretary of the Interior, have never been delivered. They were given to the Principal Chief for delivery, but, while in the hands of the chief for that purpose, they were recalled by the Dawes Commission for further investigation into the rights of Thlocco to enrollment. Nor could the chief have delivered the deeds to Thlocco, with whatever promptness he might have acted, if the facts offered in proof by the Government were true. According to that offer, Thlocco had died prior to April 1, 1899, and delivery to him was, therefore, impossible.

According to Blackstone, as above quoted, it is essential to a deed that there be a person able to contract and be contracted with, that there be a grantor, a grantee and a thing to be granted. By the term grantee, a living, sentient person was intended. Divestiture of title, to be effective, must be followed by investiture, and for purposes of investiture there must be a person in being who may accept the title and in whom it may repose. A dead person can neither accept title nor act as a repository for one. If, therefore, the owner of real estate attempt to divest himself of his title by conveyance thereof to a dead person, he ac-

completes nothing, for the title remains in him, where it was before he attempted its conveyance. This being true no title whatever passes, and the doctrine of an innocent purchaser for value, without notice, does not obtain. As was said in the Hawkins case: "The good faith of a purchaser cannot create a title where none exists."

In considering this case it must be borne in mind that the Government offered to prove that Thlocco died anterior to the enrollment of his name, the issuance of the certificate of allotment and the execution of the patents. For purposes of this case it must be assumed that these facts are all true. We have seen that the act of Congress provides that all citizens who were living on the first day of April, 1899, should be placed upon the rolls to be made by the Commission under the act of June 28, 1898. The act utterly excludes the idea of authority to the Commission to place a *dead* citizen on the roll. There must, therefore, be a valid subsisting enrollment before there can be a valid subsisting allotment, or a valid subsisting deed, made pursuant to such enrollment and allotment. If the enrollment is invalid, because made in the name of a person *not in being* at the time, all proceedings based upon the enrollment are void, and this, too, as to an innocent purchaser for value. The enrollment of a *dead* citizen is equivalent to the creation of a *fictitious* person. In contemplation of law, and for the purpose of receiving and accepting title, a dead person and a fictitious person occupy the same plane. Neither can act in the capacity of grantee, and a grantee is just as essential to a valid conveyance of real estate as is a grantor, or the real estate to be granted.

It follows that the enrollment, the allotment and the deeds were all as though they had been made in the name of a fictitious person and this court has said, in *Moffatt vs. United States, supra*, that a patent issued to a fictitious person "could not transfer the title and no one could derive any right under a conveyance in the name of the supposed

patentee." And again in the same case the court said, that to apply the doctrine of a *bona fide* purchaser "there must be a genuine instrument having a legal existence as well as one appearing on its face to pass the title. It cannot arise on a forged instrument or one executed to fictitious parties, that is, to no parties at all, however much deceived thereby the purchaser may be."

This case has been followed by the Ninth Circuit Court of Appeals in the case of *McLeod vs. United States* (187 Fed., 261), and *McClure vs. United States* (187 Fed., 265). In both cases the Ninth Circuit Court of Appeals held that innocent purchase constitutes no defense to the holder of a title procured by, and made to, a fictitious person.

Under the *Hawkins*, *Moffatt* and *McLeod* cases, it would seem that a purchaser of real estate is bound to know that the title thereto passed from the Government to a person in being and capable of receiving and accepting it. To the same effect is the decision of this court in the case of *Sampoyriac vs. U. S.*, 7 Peters.

It may be contended, however, that under the terms of section 5 of the act of April 26, 1906, or section 32 of the act of June 25, 1910, the title to the lands described in the patents issued in the name of Barney Thlocco inured to, and became vested in, his heirs. A close examination of the two acts precludes any such conclusion. Both acts presuppose an ancestor living on April 1, 1899. The act of April 26, 1906, goes still further and presupposes an *allottee*.

Section 5 of the act of April 26, 1906, is as follows:

"That all patents or deed to allottees in any of the Five Civilized Tribes to be hereafter issued shall issue in the name of the allottee, and if any such allottee shall die before such patent or deed becomes effective, the title to the lands described therein shall inure to and vest in his heirs, and in case any allottee shall die after restrictions have been removed, his property shall descend to his heirs or his lawful assigns, as if

the patent or deed had issued to the allottee during his life, and all patents heretofore issued, where the allottee died before the same became effective, shall be given like effect; and all patents or deeds to allottees and other conveyances affecting lands of any of said tribes shall be recorded in the office of the Commissioner to the Five Civilized Tribes, and when so recorded shall convey legal title, and shall be delivered under the direction of the Secretary of the Interior to the party entitled to receive the same: *Provided*, the provisions of this section shall not affect any rights involved in contests pending before the Commissioner to the Five Civilized Tribes or the Department of the Interior at the date of the approval of this act."

Section 32 of the act of June 25, 1910, is as follows:

"Where deeds to tribal lands in the Five Civilized Tribes have been or may be issued, in pursuance of any tribal agreement or act of Congress, to a person who had died or who hereafter dies before the approval of such deed, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life."

In the Creek Nation the patents were executed by the Principal Chief, and were then forwarded to the Secretary of the Interior for his approval. Thereafterwards they were filed for record in the office of the Dawes Commission. Following their recordation they were handed back to the chief for delivery to the patentees, or other persons authorized to receive them, and became effective to pass title only upon such delivery.

The purpose of the act of 1906 was to make recordation of patents equivalent to their delivery, but this statute applied only to those persons to whom an allotment had in fact been made, in conformity with the prescribed law and procedure governing allotments, and who had died thereafterwards, before such patents became effective. A close reading of sec-

tion 5 will show that it is susceptible of no other construction. If, as in the present case, the person named in the certificate of allotment died prior to April 1, 1899, there could be no allottee, and, therefore, no heirs to whom the lands described in the certificate of allotment and patents might descend. Had Thlocco been a lawful allottee, and had he died between the issuance of the certificate of allotment and the time when the patent become effective, then a different question might arise, but that question does not arise in this case, although it is submitted that the act does not expressly abrogate the common-law rule requiring a living grantee at the time when the patent is executed.

Nor does the act of June 25, 1910, apply to the facts in the present case. By that act it is provided that, where the person to whom a deed to tribal land had been issued had died before the approval of the deed the title to the land would inure and become vested in the heirs of the patentee, as if the deed had issued to the patentee during his lifetime. In this act the word "person" is used instead of the word "allottee," as in the act of 1906, but it likewise refers to deeds issued pursuant to any tribal agreement or act of Congress. It will be noted that the act applies to a deed issued "to a person who had died, or who hereafter dies, before the approval of such deed." Plainly this means a deed which had been executed in the lifetime of the grantee, but before its approval by the Secretary of the Interior such grantee had died. Whatever may have been the intent of Congress in enacting this statute, it has no application to the case under consideration, and this is equally true of the act of 1906.

Thlocco was either living on April 1, 1899, or he was dead. If living, he was entitled to enrollment, so far as that qualification is concerned; but if dead, he was not entitled to enrollment, and the Dawes Commission was without jurisdiction to enroll him, regardless of his qualifications in other respects. If he was not entitled to enrollment, he was not entitled to an allotment, and no patents conveying to him any

part of the public domain of the Creek Nation could lawfully be issued in his name. The Government offered to prove that he died in January, 1899. It must be assumed by this court that the Government would have sufficiently established that fact had it been permitted to do so by the trial court. In refusing to permit the Government to make this proof, the trial court, in the opinion of counsel for the Creek Nation, acted upon an erroneous theory, which the Government now asks this court to correct. In support of this contention we cite the court to the opinion of the Circuit Court of Appeals for the Eighth Circuit in the Hawkins case, *supra*, as follows:

"It is claimed that section 5 of the act of Congress of April 26, 1906 (34 Stat., 137), and section 32 of the act of Congress of June 25, 1910 (36 Stat., 855), relieve the case of the difficulties which have been mentioned. These laws have no application where there is no allottee. The language used in section 5 assumes that there is in existence a legal allottee, and provides for the contingency of the death of the allottee before the patent becomes effective. This law that, if the death of the allottee occurs before the patent becomes effective, the land shall inure to and vest in his heirs. Section 32 is to the same effect. It assumes that deeds have been issued to a legal allottee, who has died before the approval of the deed. Neither section deals with the case where there never was an allottee in existence."

Appellees might cite the cases of *Skelton vs. Dill* (235 U. S., 206) and *Mullen et al. vs. United States* (56 L. Ed., 834), decided by this court, and the case of *United States vs. Jacobs* (195 Fed., 707), decided by the United States Circuit Court of Appeals for the Eighth Circuit, as militating against the position taken by the Government in the instant case, but in the opinion of counsel for the Creek Nation those cases are without application here. A critical examination will disclose the facts in each to be different from the facts presented by the record in this case. In the *Jacobs* case the

patent was issued directly to the heirs, and not in the name of the deceased citizen. What was said by the court in the Mullen and Skelton cases, insofar as it relates to the present case, was mere dicta and unrelated to the questions in fact decided by the court.

Did the Commission to the Five Civilized Tribes Possess the Power to Make an Arbitrary Selection and Allotment in the Creek Nation Without the Intervention of the Citizen or His Heirs?

Subsequent to the enrollment of the name of Barney Thlocco, and on May 24, 1902, the Dawes Commission adopted the following resolution (Tr., p. 45):

"MUSKOGEE, INDIAN TERRITORY, May 24, 1902.

"A session of the Commission to the Five Civilized Tribes was held at its general office at Muskogee, Indian Territory, on the above date, there being present Commissioners Bixby, Needles, and Breckenridge.

* * * * *

"Whereas, section three of the act of Congress approved March 1, 1901 (31 Stat., 861), known as the Creek Agreement, provides that

"All lands of said tribe except as herein provided shall be allotted among the citizens of the tribe by said Commission so as to give to each citizen an equal share of the whole in value as nearly as may be."

and that

"* * * there shall be allotted to each citizen one hundred and sixty acres of land."

"And

"Whereas, section seven of said act provides that,

"* * * each citizen shall select from his allotment forty acres of land as a homestead."

"And that

" * * * if for any reason such selection shall not be made for any citizen, it shall be the duty of said Commission to make selection for him."

"And, whereas, numerous citizens of said nation have made no selection of land for allotment and others have made selections of only a portion of the land to which they are entitled, and

"Whereas, after due notice given, many citizens of said nation have failed to make a selection of a homestead, therefore, be it

"*Resolved*, That the acting chairman is hereby authorized and empowered by and on behalf of the Commission to allot to each citizen out of the lands of the Creek Nation not heretofore allotted or selected such an amount of land of at least average quality as will make the total allotment of each citizen one hundred and sixty acres, and to select a homestead for such citizens in all cases where a selection of a homestead has not been made by or on behalf of said citizen;

"*Provided*, That the allotment and selection of homestead so made for a citizen shall include improvements shown by the plats or records of the office to belong to said citizen."

"On motion of Commissioner Breckenridge, duly seconded, the same was unanimously adopted.

* * * * *

"There being no further business before the meeting the Commission on motion was adjourned.

"TAMS BIXBY,

"*Acting Chairman*."

"Attest:

"A. L. AYLESWORTH, *Secretary*."

It was under the pretended authority of this resolution that an allotment was set apart to Barney Thlocco.

A review of the various acts of Congress and agreements made with the Creeks, as applied to the facts in this case, brings us then to enquire, by what authority did the Dawes

Commission undertake to segregate 160 acres of the lands belonging to the Creek Indians and allot same in the name of Barney Thlocco? Was the allotment made to Barney Thlocco in conformity with any act of Congress or agreement made with the tribe? And, if not, is it too late for the Creek Nation to raise the question?

In discussing this question I do not think that it is improper to call attention to its tremendous importance, as it affects not only the allotment in this case, worth approximately \$2,000,000, but also allotments involved in litigation pending in the United States District Court for the Eastern District of Oklahoma, valued at many millions more.

In considering this question the court will bear in mind the facts in this case. These indisputable or undisputed facts are shown by this record:

1st. Barney Thlocco was enrolled opposite Creek Roll No. 8592, May 24, 1901 (Tr., p. 38).

2d. There exists no record showing that the Commission took any evidence, oral or documentary, to determine his right to enrollment (Tr., p. 37).

3d. Thlocco died prior to June 30, 1902. (The Government offered to prove that he died prior to April 1, 1899 (Tr., p. 111). The defendants, in their answer, say he died prior to the 30th day of June, 1902 (paragraph 8, p. 30).

4th. An allotment was arbitrarily made by the Commission to and in the name of Barney Thlocco on June 30, 1902 (Tr., p. 44).

5th. Homestead and allotment deeds were issued to and in the name of Barney Thlocco on March 11, 1903, and approved April 3, 1903 (Tr., pp. 47 and 48).

6th. These deeds were sent to the chief of the Creek Nation for delivery to the allottee. There then arose a question as to whether or not Thlocco was entitled to an allotment, and the patents were, on August 31, 1904, recalled from the chief of the Creek Nation and returned to the files of the Commission where they have since remained, and no patent was ever delivered to any person conveying any part of said allotment (Tr., p. 49). The Government offered to prove that an investigation was then made and that subsequently and on December 13, 1906, the Secretary of the Interior ordered the name cancelled (Tr., p. 61).

7th. The Government offered to prove that the lands allotted in the name of Thlocco were unimproved, and had not been tilled, or in any other manner occupied, prior to the time the allotment was cancelled by the Secretary of the Interior, or prior to the attack by the Government in this case. The offer was refused upon objection by defendants (Tr., p. 51).

8th. If Barney Thlocco was known to the Commission to be living on April 1, 1899, at the time he was enrolled, there is no record, communication, oral or documentary evidence, in the possession of the Commission showing this fact, nor is there any person, connected with the Commission at that time, who remembers anything concerning his enrollment, except that the name, with numerous others, was enrolled at Okmulgee on May 24, 1901.

Negotiations Leading Up to Enrollment and Allotment of Creek Citizens.

A proper understanding of the necessity existing on the part of Congress to treat with the Creek Tribe of Indians, and to secure their consent to the allotment of their lands in severalty, as contended herein, as well as an understanding of the various acts of Congress relating to the enroll-

ment and allotment of these people, requires also an understanding of the early history of the tribe.

As will be remembered, the Creek Indians at one time owned practically all the territory now embraced in the States of Georgia and Alabama. As early as 1790, by reason of the turbulent and war-like disposition of the Creek Indians, agitated by the encroachment of the white man on their domain, the people of Alabama and Georgia prevailed upon the Federal Government to remove them to some other territory in the United States.

Between 1790 and 1825 negotiations were going on between the Government and the Creek Indians with a view to that purpose. These negotiations culminated in the treaty of 1825. History records that the Creek Indians became so embittered against the Government and their theretofore beloved chieftain and leader, William McIntosh, by reason of his participation in this treaty, that they formed a mob and executed McIntosh under the pretended authority of a law then upon their statute books forbidding, under penalty of death, any one from attempting to convey any part of their domain.

Subsequently, and in 1826, another treaty was negotiated by the terms of which it was agreed that five of the leading or head men of the Creek Nation should visit the country west of the Mississippi River and there secure a new home for the tribe. This committee having reported, and negotiations having been completed, the treaty of March 24, 1832 (7 Stat., 366), was entered into between the Creeks and the Government, by which it was agreed that the Creeks should surrender their lands in Georgia and Alabama in lieu of the territory to be granted to them by the Government west of the Mississippi, which had been selected by the committee under the treaty of 1826.

On February 14, 1833, another treaty was signed, which defines the boundary of the territory to be granted to the Creeks by the Government, and which constitutes the pres-

nt boundary of the Creek and Seminole Nations (7 Stat., 70).

Because of the conditions existing in the States of Georgia and Alabama, the Creeks required the Government to agree, in consideration of their surrendering their lands in those States, that they would not be molested in the occupancy of the lands ceded to them west of the Mississippi.

Articles I and III of said treaty are as follows:

"Art. I. The Muskogee or Creek Nation of Indians, west of the Mississippi declare themselves to be the friends and allies of the United States, under whose parental care and protection they desire to continue; and that they are anxious to live in peace and friendship not only with their near neighbors and brothers, the Cherokees, but with all the surrounding tribes of Indians."

"Art. III. The United States will grant a patent, in fee-simple, to the Creek Nation of Indians for the land assigned said nation by this treaty or convention, whenever the same shall have been ratified by the President and Senate of the United States—and the right thus guaranteed by the United States shall be continued to said tribe of Indians, so long as they shall exist as a nation, and continue to occupy the country hereby assigned them."

Subsequent to the signing of this treaty, and on August 11, 1852, the United States executed and delivered to the Creek Indians a patent conveying to them that territory thereafter known as the Creek Nation in the Indian Territory. The granting and *habendum* clause in this patent is as follows:

"Now know ye, That the United States of America, in consideration of the premises and in conformity with the above recited provisions of the treaty aforesaid, have given and granted, and by these presents do give and grant, unto the said Muskogee, or Creek tribe of Indians, the tract of country above described. To have and to hold the same unto

the said tribe of Indians so long as they shall exist as a nation and continue to occupy the country hereby conveyed to them."

This patent is of record in volume 4 of Indian deeds, at pages 446 and 447, in the office of the Commissioner of Indian Affairs at Washington.

It will be observed that the treaty of 1833 provided that the United States would grant to the Creek Indians in fee simple the lands described in said treaty, the consideration moving from the Creek Indians to the Government being the agreement of the former to surrender the territory owned and occupied by them in Georgia and Alabama.

It was held in the case of *Holden vs. Joye*, 84 U. S., 211, that—

"the Indian tribes are capable of taking as owners in fee simple lands by purchase, where the United States in form, and for valuable and adequate consideration, so sell them to them. Such a sale is properly made by treaty."

That the Creek Indians believed they were acquiring a title in fee simple to all of the territory embraced in the boundary described in their patent, there can be no question. Such would have been the interpretation placed upon this grant by any untutored and unlettered people.

See also:

Choctaw Nation vs. United States, 119 U. S., 1.

United States vs. Winans, 198 U. S., 371.

Choate vs. Trapp, 224 U. S., 665.

Shulthis vs. McDougal, 170 Fed., 529.

Woodward vs. de Graffenried, 238 U. S., 284.

In the case of *Choctaw Nation vs. United States*, *supra*, this court said:

"In reviewing the controversy between the parties presented by this record, it is important and necessary to consider and dispose of some preliminary

questions. The first relates to the character of the parties, and the nature of the relation they sustain to each other. The United States is a sovereign nation, not suable in any court except by its own consent, and upon such terms and conditions as may accompany that consent, and is not subject to any municipal law. Its government is limited only by its own constitution, and the nation is subject to no law but the law of nations. On the other hand, the Choctaw Nation falls within the description, in the terms of our constitution, not of an independent state or sovereign nation, but of an Indian tribe. As such it stands in a peculiar relation to the United States. It was capable under the terms of the constitution of entering into treaty relations with the government of the United States, although, from the nature of the case, subject to the power and authority of the laws of the United States when Congress should choose—as it did determine in the act of March 3, 1871, embodied in section 2079 of the Revised Statutes—to exert its legislative power.

“As was said by this court recently in the case of *U. S. vs. Kagama*, 118 U. S., 375; S. C., 6 Sup. Ct. Rep., 1109: ‘These Indian tribes are the wards of the nation. They are communities dependent on the United States; dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive, by Congress, and by this court, whenever the question has arisen.’”

“It had accordingly been said in the case of *Worcester vs. Georgia*, 6 Pet., 582: ‘The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only

in the latter sense. * * * How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.' "

"The recognized relation between the parties of this controversy, therefore, is that between a superior and inferior, whereby the latter is placed under the care and control of the former, and which, while it authorizes the adoption on the part of the United States of such policy as their own public interests may dictate, recognizes, on the other hand, such an interpretation of their acts and promises as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection. The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence formulating the rights and obligations of private persons, equally subject to the same laws.

"The rules to be applied in the present case are those which govern public treaties, which, even in case of controversies between nations equally independent, are not to be read as rigidly as documents between private persons governed by a system of technical law, but in the light of that larger reason which constitutes the spirit of the law of nations."

* * * * *

"It is notorious as an historical fact, as it abundantly appears from the record in this case, that great pressure had to be brought to bear upon the Indians to effect their removal, and the whole treaty was evidently and purposely executed, not so much to secure to the Indians the rights for which they had stipulated, as to effectuate the policy of the United States in regard to their removal. The most noticeable thing, upon a careful consideration of the terms of this treaty, is that no money consideration is promised or paid for a cession of lands the beneficial ownership of which is assumed to reside in the Choctaw Nation, and computed to amount to over 10,000,000 of acres. It was not an exchange of

lands east of the Mississippi River for lands west of that river. The latter tract had already been secured to them by its cession under the treaty of 1820."

In the case of *Woodward vs. de Graffenried*, *supra*, Mr. Justice Pitney, speaking for the court, said:

"The Curtis bill, as introduced in the House, did not contain the provisions of the present sections 29 and 30 (30 Stat. at L., 505, 514, chap. 517), ratifying, with amendments, and submitting to the approval of the members of the respective tribes, the Atoka agreement and the Creek agreement of September 27, 1897, then recently rejected by the Indians. These were added as a Senate amendment, perhaps at the suggestion of the Dawes Commission, for it appears from their 5th Report, p. 1053, that they were in Washington co-operating with Congress respecting this legislation. Section 11, however, in substantially its final form, was a part of the original bill. Sections 16, 17, and 23, also, but in somewhat different form, were in the bill as introduced.

"It is evident that at the time this law was enacted, Congress entertained serious doubts as to its constitutional power to interfere with the tribal lands of the Five Civilized Tribes or to overthrow the tribal governments without the consent of the Indians."

That Congress recognized the Creeks to be the absolute owners of the lands embraced within their domain is shown by the act of March 3, 1893 (27 Stat., 612), section 16 providing, in part, as follows:

"The President shall nominate and, by and with the advice and consent of the Senate, shall appoint three commissioners to enter into negotiations with the Cherokee Nation, the Choctaw Nation, the Chickasaw Nation, the Muskegee (or Creek) Nation, the Seminole Nation, for the purpose of the extinguishment of the national or tribal title to any lands within that territory now held by any and all of such nations or tribes, either by cession of the same or some part thereof to the United States, or by the

allotment and division of the same in severalty among the Indians of such nations or tribes, respectively, as may be entitled to the same, or by such other method as may be agreed upon between the several nations and tribes aforesaid, or each of them, with the United States, with a view to such an adjustment, upon the basis of justice and equity, as may, with the consent of such nations or tribes of Indians, so far as may be necessary, be requisite and suitable to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said Indian Territory."

Acts of Congress and Agreements Relating to Enrollments.

Subsequent to the passage of the act of March 3, 1893, *supra*, negotiations were begun looking to the enrollment of the citizens of this tribe, preliminary to their allotment of lands in severalty, resulting in the following acts being passed by Congress:

Act of June 10, 1896 (29 Stat., 339).

Act of June 7, 1897 (30 Stat., 62).

Act of June 28, 1898, commonly known as the Curtis act (30 Stat., 495).

Act of March 31, 1900 (31 Stat., 221).

Original Creek agreement approved March 1st, 1901 (31 Stat., 861).

Supplemental Creek Agreement approved June 30, 1902 (32 Stat., 500).

The act of Congress of June 10, 1896, *supra*, among other things, provides:

"* * * and said Commission is directed to continue the exercise of the authority already conferred upon them by law and endeavor to accomplish the object heretofore prescribed to them and report from time to time to Congress.

"That said Commission is further authorized and directed to proceed at once to hear and determin

the application of all persons who may apply to them for citizenship in any of said nations, and after such hearing they shall determine the right of such applicant to be so admitted and enrolled;

“Provided, however, That such application shall be made to such Commissioners within three months after the passage of this act.

“The said Commission shall decide all such applications within ninety days after the same shall be made.

“That in determining all such applications said Commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages and customs of each of said nations or tribes;

And provided, further, That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be admitted to said rolls as a citizen of either of said tribes and whose rights thereto has either been denied or not acted upon, or any citizen who may within three months from and after the passage of this act desire such citizenship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof.

“In the performance of such duties said Commission shall have power and authority to administer oaths, to issue process for and compel the attendance of witnesses, and to send for persons and papers, and all depositions and affidavits and other evidence in any form whatsoever heretofore taken where the witnesses giving said testimony are dead or now residing beyond the limits of said Territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud or wrong, and the rolls so prepared by them shall be heretofore held and considered to be the true and correct rolls of persons

entitled to the rights of citizenship in said several tribes;

"Provided, That if the tribes, or any person, be aggrieved with the decision of the tribal authorities or the Commission provided for in this act, it or he may appeal from such decision to the United States district court.

"Provided, however, That the appeal shall be taken within sixty days, and the judgment of the court shall be final.

"That the said Commission, after the expiration of six months, shall cause a complete roll of citizenship of each of said nations to be made up from their records, and add thereto the names of citizens whose right may be conferred under this act, and said rolls shall be, and are hereby, made rolls of citizenship of said nations or tribes, subject, however, to the determination of the United States courts, as provided herein.

"The Commission is hereby required to file the lists of members as they finally approve them with the Commissioner of Indian Affairs to remain there for use as the final judgment of the duly constituted authorities."

The act of June 7, 1897, *supra*, among other things, provides:

"That said Commission shall continue to exercise all authority heretofore conferred on it by law to negotiate with the Five Tribes, and any agreement made by it with any one of said tribes, when ratified, shall operate to suspend any provisions of this act if it conflict therewith as to said nation.

"Provided, That the words 'rolls of citizenship,' as used in the act of June tenth, eighteen hundred and ninety-six, making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, shall be construed to mean the last authenticated rolls of each tribe which have been approved by the council of the nation, and the descendants of those appearing on such rolls, and

such additional names and their descendants as have been subsequently added, either by the council of such nation, the duly authorized courts thereof, or the Commission under the act of June tenth, eighteen hundred and ninety-six. And all other names appearing upon such rolls shall be open to investigation by such Commission for a period of six months after the passage of this act. And any name appearing on such rolls and not confirmed by the act of June tenth, eighteen hundred and ninety-six, as herein construed, may be stricken therefrom by such Commission where the party affected shall have ten days' previous notice that said commission will investigate and determine the right of such party to remain upon such roll as a citizen of such nation.

"*Provided, also,* That any whose name shall be stricken from the roll by such Commission shall have the right of appeal, as provided in the act of June tenth, eighteen hundred and ninety-six."

Section 11 of the act of June 28, 1898, *supra*, provides:

"That when the roll of citizenship of any one of said nations or tribes is fully completed as provided by law, and the survey of the lands of said nation or tribe is also completed, the Commission heretofore appointed under act of Congress, and known as the 'Dawes Commission,' shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment among the citizens thereof, as shown by said roll, giving to each, as far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location, and value of same. * * *"

Section 21 of said act reads, in part, as follows:

"Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls all such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their

descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and laws of said tribe. * * *

"Said Commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the officers of the tribal government and custodians of such rolls and records to deliver the same to said Commission and on their refusal or failure to do so to punish them as for contempt; as also to require all citizens of said tribes, and persons who should be so enrolled, to appear before said Commission for enrollment, at such times and places as may be fixed by said Commission, and to enforce obedience of all others concerned, so far as the same may be necessary, to enable said Commission to make rolls as herein required, and to punish anyone who may in any manner or by any means obstruct said work."

"The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons who may intermarry according to tribal laws, shall also constitute the several tribes which they represent."

"The members of said Commission shall, in performing all duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers; and any person who shall willfully and knowingly make any false affidavit or oath to any material fact or matter before any member of said Commission, or before any other officer authorized to administer oaths, to any affidavit or other paper to be filed or oath taken before said Commission, shall be deemed guilty of perjury and on conviction thereof shall be punished as such offense."

The act of May 31, 1900, provides, in part, as follows:

“* * * That said Commission shall continue to exercise all authority heretofore conferred on it by law. But it shall not receive, consider, or make any record of any application of any person for enrollment as a member of any tribe in Indian Territory who has not been a recognized citizen thereof, and duly and lawfully enrolled or admitted as such, and its refusal of such application shall be final when approved by the Secretary of the Interior:

“*Provided*, That any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes, shall have the right to, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of *bona fide* settlement may be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment: *Provided further*, That all contracts or agreements looking to the sale or incumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void.”

Section 28 of original Creek agreement provides:

“No person, except as herein provided, shall be added to the rolls of citizenship of said tribe after the date of this agreement, and no person whomsoever shall be added to said rolls after the ratification of this agreement.

“All citizens who were living on the first day of April, eighteen hundred and ninety-nine, entitled to be enrolled under section twenty-one of the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled ‘An act for the protection of the people of the Indian Territory, and for other purposes,’ shall be placed upon the rolls to be made by said Commission under said act of Congress, and if any such citizen has died since that time, or may hereafter die, before receiving his allotment of lands and distributive share of all the funds of the tribe, the

lands and money to which he would be entitled living, shall descend to his heirs according to the law of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.

* * * * *

"The rolls so made by said Commission, when approved by the Secretary of the Interior, shall be final rolls of citizenship of said tribe, upon which the allotment of all lands and distribution of all moneys and other property of the tribe shall be made, and to no other persons."

Act of March 3, 1901, provides, in part, as follows:

"* * * The rolls made by the Commission to the Five Civilized Tribes, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon shall alone constitute the several tribes which they represent; and the Secretary of the Interior is authorized and directed to fix a time by agreement with said tribes, or either of them, for closing said rolls, but upon failure or refusal of said tribes or any of them to agree thereto, then the Secretary of the Interior shall fix a time for closing said rolls, after which no name shall be added thereto."

Sections 7, 8, and 9 of Creek supplemental agreement provide:

"7. All children born to those citizens who are entitled to enrollment as provided by the act of Congress approved March 1, 1901 (31 Stat. L., 861), subsequent to July 1, 1900, and up to and including May 25, 1901, and living upon the latter date, shall be placed on the rolls made by said Commission. And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.

"8. All children who have not heretofore been listed for enrollment living May 25, 1901, born to citi-

whose names appear upon the authenticated rolls of 1890 or upon the authenticated rolls of 1895, and entitled to enrollment as provided by the act of Congress approved March 1, 1901 (31 Stat. L., 861), shall be placed on the rolls made by said Commission. And if any such child has died since May 25, 1901, or may hereafter die, before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.

"9. If the rolls of citizenship provided for by the act of Congress approved March 1, 1901 (31 Stat. L., 861), shall have been completed by said Commission prior to the ratification of this agreement, the names of children entitled to enrollment under the provision of sections 7 and 8 hereof shall be placed upon a supplemental roll of citizens of the Creek Nation, and said supplemental roll, when approved by the Secretary of the Interior, shall in all respects be held to be a part of the final rolls of citizenship of said tribe: *Provided*, that the Dawes Commission be, and is hereby, authorized to add the following persons to the Creek roll: Mar-wal-le-pe-se, Mary Washington, Walter Washington, and Willie Washington, who are Creek Indians, but whose names were left off the roll through neglect on their part."

The foregoing are all of the provisions of law relating to the subject of enrollment, in so far as citizens enrolled prior to May 25, 1901, are concerned.

Acts of Congress and Agreements Relating to Allotments.

This brings us to a discussion of the acts of Congress authorizing allotments to be made in the Creek Nation to citizens of that nation who were enrolled prior to May 25, 1901.

In so far as this question is involved, the following acts of Congress constituted the only authority ever vested in the Dawes Commission to allot citizens of the Creek Nation: The Curtis Act (30 Stat., 495), the original Creek Agree-

ment (31 Stat., 861), the Supplemental Creek Agreement (32 Stat., 500).

Section 11 of the Curtis Act merely vested in the Commission the right to allot the surface of the lands to the citizens of the Creek Nation, and such allotment only vested in the allottee a mere right of occupancy. *Woodward vs. de Grafenried*, 238 U. S., 284.

What might properly be termed the first act of Congress authorizing the allotment of the public domain of the Creek Nation to the citizens thereof was the original Creek Agreement, *supra*, approved March 1, 1901, and ratified by the Creek Tribal Council on May 25, 1901. By section 3 of this agreement the United States guaranteed to distribute the property of the tribe equally among its members, said section providing:

"All lands of said tribe, except as herein provided, shall be allotted among the citizens of the tribe by said Commission so as to give each an equal share of the whole in value, as nearly as may be, in manner following: There shall be allotted to each citizen one hundred and sixty acres of land—boundaries to conform to the Government survey—which may be selected by him so as to include improvements which belong to him. One hundred and sixty acres of land, valued at six dollars and fifty cents per acre, shall constitute the standard value of an allotment, and shall be the measure for the equalization of values; and any allottee receiving lands of less than such standard value may, at any time, select other lands, which, at their appraised value, are sufficient to make his allotment equal in value to the standard so fixed.

"If any citizen select lands the appraised value of which, for any reason, is in excess of such standard value, the excess of values shall be charged against him in the future distribution of the funds of the tribe arising from all sources whatsoever, and he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and money equal in value to his allotment. If any citizen select lands the appraised value of which

is in excess of such standard value, he may pay the overplus in money; but if he fail to do so, the same shall be charged against him in the future distribution of the funds of the tribe arising from all sources whatsoever, and he shall not receive any further distribution of property or funds until all other citizens shall have received lands and funds equal in value to his allotment; and if there be not sufficient funds of the tribe to make the allotments of all other citizens of the tribe equal in value to his, then the surplus shall be a lien upon the rents and profits of his allotment until paid."

It will be observed that this act presupposes that the allottee will select his allotment.

If the foregoing section leaves any doubt as to the soundness of the contention of counsel for the Creek Nation that each allottee was required to select his allotment, it is removed by the next section of the act, providing for the selection of allotments for minors, prisoners, convicts, and aged and infirm persons, said section 4 providing:

"Allotment for any minor may be selected by his father, mother, or guardian, in the order named, and shall not be sold during his minority. All guardians or curators appointed for minors and incompetents shall be citizens.

"Allotments may be selected for prisoners, convicts, and aged and infirm persons by their duly appointed agents, and for incompetents by guardians, curators, or suitable persons akin to them, but it shall be the duty of said Commission to see that such selections are made for the best interests of such parties."

It was only in the case of selections of the homestead out of the selected allotments that the Dawes Commission was authorized to act independently of the citizens for whom allotments were being made. This authority was conferred by the second paragraph of section 7 of said act, which reads as follows:

"Each citizen shall select from his allotment forty acres of land as a homestead, which shall be non-taxable and inalienable and free from any incumbrance whatever for twenty-one years, for which he shall have a separate deed, conditioned as above: *Provided*, That selections of homesteads for minors, prisoners, convicts, incompetents, and aged and infirm persons, who cannot select for themselves, may be made in the manner herein provided for the selection of their allotments; and if, for any reason, such selection be not made for any citizen, it shall be the duty of said Commission to make selection for him."

Section 45 of said act provides:

"All things necessary to carrying into effect the provisions of this agreement, not otherwise herein specifically provided for, shall be done under authority and direction of the Secretary of the Interior."

I do not believe that it will be seriously contended that section 45 was ever intended to give the Secretary of the Interior authority to arbitrarily allot lands belonging to the Creek tribe of Indians to the members thereof. If such was the intention of Congress, the jurisdiction was never exercised by the Secretary of the Interior, for there cannot be found any authority emanating from the Secretary of the Interior to the Commission to the Five Civilized Tribes to arbitrarily allot any citizen of the Creek Nation. There is a reason for the provisions of the Acts of Congress requiring each citizen of the Creek Nation to select for himself, or to have selected by some person standing in a trust relationship to the allottee, the distributive share of the lands to which each member of the tribe was entitled.

In another part of this brief, reviewing the early treaties between the Creek tribe of Indians and the United States, we find that the tribe owned in fee simple a large area of lands in Georgia and Alabama; that these lands were finally traded by the Creeks for an equal number of acres west of the Mis-

Mississippi known as the "Creek Nation"; that article 3 of the treaty of 1833, *supra*, provided that the Creek Nation would be conveyed to the Creek Indians in fee simple; that pursuant to this treaty, and on August 11, 1852, the United States made, executed and delivered to the Creek Indians a patent conveying said lands to them; that by these treaties the Government of the United States conveyed to these wards of the Government the highest character of title which can be granted. In dealing with them as their wards the Government owed them not only the duty of defending this title against any encroachment, but to keep inviolate the terms of the agreement as understood by these dependent people.

When the original agreement of March 1, 1901, was signed the United States recognized in the tribe the rights guaranteed by the treaty of 1833 to hold in common the public domain of the Creek Nation. The duty, therefore, devolved upon each citizen of the tribe to make his application for his selection of an allotment a surrender of all his right, title, and interest, in and to the remaining portion of the public domain.

Subsequent to the ratification and approval of the original Creek agreement, and on June 26, 1902, the Creek Tribal Council ratified what is known as the "Supplemental Agreement with the Creek Indians," which was approved on June 30, 1902. This supplemental agreement does not contain any provision which could be construed as authorizing the Commission to the Five Civilized Tribes to select an allotment for any member of the Creek tribe of Indians. The only provisions of the supplemental agreement relating to the question of allotments are sections 3, 4, and 5 of said agreement, which read as follows:

3. "Paragraph 2 of section 3 of the agreement ratified by said act of Congress approved March 1, 1901, is amended and as so amended is re-enacted to read as follows:

"If any citizen select lands the appraised value of which is \$6.50 per acre, he shall not receive any

further distribution of property or funds of the tribe until all other citizens have received lands and moneys equal in value to his allotment.'

"4. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes to determine, under the direction of the Secretary of the Interior, all controversies arising between citizens as to their right to select certain tracts of land.

"5. Where it is shown to the satisfaction of said Commission that it was the intention of a citizen to select lands which include his home and improvements, but that through error and mistake he had selected land which did not include said home and improvements, said Commission is authorized to cancel said selection and the certificate of selection or allotment embracing said lands, and permit said citizen to make a new selection including said home and improvements; and should said land including said home and improvements have been selected by any other citizen of said nation, the citizen owning said home and improvements shall be permitted to file, within ninety days from the ratification of this agreement, a contest against the citizen having previously selected the same and shall not be prejudiced therein by reason of lapse of time or any provision of law or rules and regulations to the contrary."

In the agreement with the Choctaw and Chickasaw Indians, approved July 1, 1902 (32 Stat., 641), authority was given the Dawes Commission to arbitrarily allot members of said tribe, section 17, providing:

"If, for any reason, an allotment should not be selected or a homestead designated by, or on behalf of, any member or freedman, it shall be the duty of said Commission to make said selection and designation."

No such provision as is contained in the Choctaw and Chickasaw Agreement is found in any acts of Congress relating to the work of allotting citizens of the Creek Nation.

The attention of the court is called to the similarity of

the agreement made with the Creek Nation and the agreement made with the Choctaw-Chickasaw Nations. They were, however, dissimilar in that, in the agreement with the Creek Nation no authority was conferred upon the Dawes Commission to make an arbitrary allotment, whereas in the Choctaw-Chickasaw agreement it is provided that an allotment shall be made by the Commission in the event that the citizen does not select an allotment.

In the case of *Choate vs. Trapp* (56 L. Ed., 944), the Supreme Court of the United States in discussing the provisions of the Choctaw-Chickasaw agreement used the following language:

"The individual Indian had no title or enforceable right in the tribal property. But as one of those entitled to occupy the land, he did have an equitable interest, which Congress recognized, and which it desired to have satisfied and extinguished. The Curtis act was framed with a view of having every such claim satisfactorily settled. And though it provided for a division of the land in severalty, it offered a patent of nontaxable land only to those who would relinquish their claim to the other property of the tribe formerly held for their common use. For the Atoka agreement, after declaring that 'all land allotted should be nontaxable,' stipulated further that each enrolled member of the tribes should receive a patent framed in conformity with the agreement, and that each Choctaw and Chickasaw who accepted such patent should be held thereby to assent to the terms of this agreement, and to relinquish all of his right in the property formerly held in common.

"There was here, then, an offer of nontaxable land. Acceptance by the party to whom the offer was made, with consequent relinquishment of all claim to other lands, furnished a part of the consideration, if, indeed, any was needed in such a case, to support either the grant or the exemption. Citing authorities.

"Upon delivery of the patent the agreement was executed, and the Indian was thereby vested with all the right conveyed by the patent, and, like a grantee

in a deed poll, or a person accepting the benefit of a conveyance, bound by its terms, although it was not actually signed by him. Citing authorities.

"As the plaintiffs were offered the allotments on the conditions proposed; as they accepted the terms, and, in the relinquishment of their claim, furnished a consideration which was sufficient to entitle them to enforce whatever rights were conferred, we are brought to a consideration of the question as to what those rights were."

On April 24, 1902, Mr. Justice Van Devanter, the then Assistant Attorney General for the Interior Department, rendered the following opinion to the Secretary of the Interior reviewing the act of March 1, 1901:

"April 24, 1902.

"THE SECRETARY OF THE INTERIOR.

"SIR: The Department has held that under the agreement with the Creek Indians ratified by the act of March 1, 1901 (31 Stat., 861), Creek citizens may not rent the lands selected by them for allotments for a longer period than one year until deeds shall have been issued to them. It is now urged that this construction should not obtain, but that said agreement should be construed as authorizing the leasing of such allotments without restriction as to the length of the term, as soon as the selection has been made and certificate issued thereon, and the matter has been submitted for my opinion.

"Paragraph 37 of said agreement contains a provision as follows:

" 'Creek citizens may rent their allotments, when selected, for a term not exceeding one year, and after receiving title thereto without restriction' * * *

"Under that agreement each citizen was to receive an allotment of one hundred and sixty acres of land to be selected by him or for him in the manner prescribed therein and the principal chief was to execute, in due form, and deliver to each citizen so selecting an allotment, 'a deed conveying to him all right, title, and interest of the Creek Nation and of

all other citizens in and to the lands embraced in his allotment certificate.' This deed is to be approved by the Secretary of the Interior, which approval is to serve as a relinquishment of all right, title, and interest of the United States in the land described therein. The acceptance of the deed by the allottee is to be taken as an assent on his part to the allotment and sale of the lands of the tribe, as in said agreement provided, and as a relinquishment of all his right, title, and interest in and to the same, except in the proceeds of the land reserved from allotment. Not until such a deed is executed, approved, and accepted is the transaction completed and the title vested in the allottee. The completion of the transaction was evidently the point of time referred to in the expression 'and after receiving title thereto without restriction.'

"Upon making selection the applicant is given a certificate stating that he has selected the land described and this is the allotment certificate mentioned in the agreement. It is evidence that the person to whom it is given has selected an allotment. Thereafter, and until title passes to him, he may, under the first clause of paragraph 37, rent his allotment for a term not exceeding one year. Theoretically, the certificate would issue immediately upon the selection being presented and the provision permitting the renting of allotments must be read with this theory in mind. There would be no room for the operation of the first clause if the contention were correct that it refers only to the time between the presentation of a selection and the issuance of an allotment certificate. It may be that in administering this law it has been found advisable to delay the issuance of a certificate until it can be ascertained whether such selection should be allowed, but such delay would be too short to make a permission to rent during that time of any practical benefit to the allottee. That delay was not, however, contemplated by the agreement and therefore the fact that there is such a delay does not constitute a valid argument in support of the contention that the first clause of paragraph 37 relates to the period covered by it.

"I am of the opinion that the phrase 'after receiving title,' should be construed as referring to the time when title actually passes by the delivery and acceptance of the deed provided for in said agreement.

"The paper submitted is herewith returned.

"Very respectfully,

"WILLIS VAN DEVANTER,

"*Assistant Attorney General.*

"April 24, 1902.

"Approved:

"E. A. HITCHCOCK,

"*Secretary.*"

If, as held in the opinion of the Assistant Attorney General for the Interior Department, and by the Secretary of the Interior in the case of *Majors vs. Thompson, supra*, the Creek Nation could not divest itself of title, or the allottee be invested with title, until the delivery of the patents, then obviously the action of the Dawes Commission in arbitrarily allotting this land was of no validity, and was an attempt to produce the very result which actuated the Creek National Council in refusing to empower the Commission to allot any person other than those who selected their allotment, and was an attempt to undertake to convey title to a person who was clearly not entitled to receive it, because of the death of the allottee prior to April 1, 1899.

Counsel for the Creek Nation can understand how, as a matter of public policy, this court might now be urged to sustain allotments made to citizens of the Creek Nation where the citizen was living on April 1, 1899, and subsequently accepted the patent and went into possession of the land, for such an act might be construed as tantamount to a selection and acceptance of the allotment so set apart, which is true of practically all of the cases where the allottee was, in the first instance, entitled to an allotment. It is not believed, however, that the court will listen with tolerance to the contention that the Creek Nation is estopped

from asserting the invalidity of a conveyance where, as in this case, the allottee did not accept the deeds or go into possession of the land, being unable to do either because of his non-existence, and especially is this true where the Government, in behalf of the tribe, is offering to prove that the allottee was not living on April 1, 1899, and was, therefore, not entitled to receive an allotment.

The Work of the Commission to the Five Civilized Tribes.

The duties imposed upon the Dawes Commission were most arduous. Even a close and analytical study of the acts of Congress creating those duties will not fully disclose them. The Commission was charged with the work of enrolling citizens and allotting to them in severalty their respective shares of tribal lands. Seemingly, this was a simple undertaking. In fact, however, it proved not only complicated and difficult, just how complicated and just how difficult cannot be well comprehended and appreciated without some acquaintance with the official correspondence and reports of the Commission.

For purposes of review by this court, we have collated excerpts from this correspondence and these reports, and they will be found in the appendix to this brief. They relate to, and are indexed under, the following subjects:

A.

The Indians were opposed to the division of their lands in severalty and not only afforded no assistance to the Commission but obstructed its work in many ways.

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B.

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C.

The Creek tribal rolls were not dependable, and it was recognized by the Commission and the Creek authorities that much fraud attended the making of these rolls.

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D.

The Creek Indians and the Commission to the Five Civilized Tribes construed the provisions of the various acts of Congress and agreements as requiring the personal appearing before the Commission of all citizens seeking to have their names placed upon the rolls. (Barney Thlocco did not appear before the Commission to the Five Civilized Tribes to be enrolled, nor did any person appear for him. He was dead at the time, having died prior to April 1st, 1899.)

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E.

It was believed by the Commission to the Five Civilized Tribes and the Creek Indians that no person could be entitled to enrollment who was not enrolled prior to the ratification of the Original Agreement, which was ratified on May 25, 1901, and therefore unaccounted-for Indians (of whom Thlocco was one) were listed for enrollment before the ratification of this agreement.

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F.

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G.

In the instance of deceased enrolled and allotted citizens, it was the custom and practice of the Commission to issue patents to the heirs of the deceased, and not in the name of the deceased, thus recognizing the common law rule that a deed to a dead person is ineffective to convey title.

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Conclusion.

The law, treaties, and agreements, the mass of correspondence, the reports of the Commission to the Five Civilized Tribes and other official communications herein referred to show most convincingly that the Creek Indians were slow to agree to the appeals of the United States to give up a government they had established long before the discovery of America, and their common interest in an estate which had cost them so dearly and accept a new plan of government and of land tenure, because of their distrust in the sincerity of the expressed purpose of the Government to fairly and impartially partition their land and safeguard their interests after allotments were made.

They had but the precedent of broken treaties, pledges, and promises to encourage them to believe that the Government would impartially divide their property among those entitled to share in its distribution and would protect the individuals of the tribe in the enjoyment of their estates after such division had been made.

A brief period of only sixteen years has elapsed since the Creek Indians were persuaded to enter into the Original

Creek Agreement, looking to the allotment of their lands. Since that time more than 80 per cent of the Creeks have been deprived by acts of Congress of all governmental supervision, and at least 90 per cent of that number have disposed of all they had of this world's goods, including their proportionate share of the lands of their tribe, in whose traditions they once so gloried and prided themselves. The only satisfaction that can now be experienced by these honest old Indians, denounced at the time by the officers and agents of the Government as "snakes," enemies to the United States, is to point to a record of 70 years, during which time they had safeguarded the property and property rights of the tribe, and to the Government record of 16 years, during which most of their lands have passed to the possession of their more astute and avaricious neighbor, the white man, and to say, "I told you so." And yet in the face of this record, we find in this case an earnest appeal presented to this court to permit the confessed wrongful allotment of Barney Thlocco to stand as unassailable, and to hold the tribe of Indians, wards of the Government, estopped from showing that this Thlocco was not entitled to enrollment, because of the very acts and conduct of those same agents and officers of the Government. For more than a hundred years the white man has demanded, insistently and persistently, of the courts and governmental agencies, a construction of the laws most favorable to himself and his, but I believe that this is the first time that this court has been asked to bar, by application of technical rules, a tribe of Indians, helpless and dependent wards of the Government, from showing that they are entitled to property worth many millions of dollars, because of these estoppels, secreted in their agreements and couched in language which they did not understand and could not understand.

R. C. ALLEN,

Creek National Attorney,

JAMES C. DAVIS,

Ass't Creek Attorney,

Solicitors for the Creek Nation.

APPENDIX.

Book A, p. 165.

Telegram.

MUSCOGEE, I. T., 10, 13, 1897.

The Secretary of the Interior, Washington, D. C.:

We have made repeated requests in writing and personally for copies of Creek rolls and fail to get them. Have been at Okmulgee endeavoring to take census since 11th instant, but very few citizens appear after proper advertisement. We are informed that members of National Council now in session advise citizens to not enroll.

TAMS BIXBY,
Acting Chairman.

Copied from "Acts and Resolutions of the National Council of the Muskogee Nation, 1900; Compiled by A. P. McKellog."

Amendment of September 27, 1897—Reasons Why It Was Rejected by the Council.

Sec. 277. *Be it Resolved by the National Council of the Muskogee Nation:* That in view of the fact that the agreement or treaty entered into between the United States and the Creek Nation by commissioners duly authorized thereunto on the 27th day of September, 1897, was, by joint resolution of the National Council, rejected as unsatisfactory to the Creek people, it is deemed proper that the reasons for such rejection should be publicly stated.

The most powerful consideration which induced the Creeks to remove from their country east of the Mississippi to their present home was the fact that the United States guaranteed them the unrestricted right of self-government and the peaceable occupancy of this country until they shall of their own accord make such changes in their relations

to the United States as they may deem for the betterment of their condition. It is necessary to recite a few well-known portions of the treaties now existing between the Creek Nation and the United States in order that the public may properly understand the guarantees upon which we have so far existed as a self-governing Nation.

Art. III, Treaty of 1834. "The United States will grant a patent in fee simple to the Creek Nation of Indians for the land assigned said Nation by this treaty or convention whenever the same shall have been ratified by the President and Senate of the United States; and the right thus guaranteed by the United States shall be continued to said tribe of Indians so long as they shall exist as a Nation and continue to occupy the country hereby assigned to them."

Art. IV, Treaty 1856. "The United States do hereby solemnly agree and bind themselves, that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribes of Indians; and that no portion of either of the tracts of country defined in the first and second articles of this agreement shall ever be embraced or included within, or annexed to, any Territory or State; nor shall either, or any part of either, ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same." Art. XV of the same treaty guarantees to the Creeks, "the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits, excepting, however, white persons with their property, etc."

"The United States and the Creek Nation had a wise, definite and benevolent policy" in the grant of these lands west of the Mississippi. That policy was to secure to the Creeks a country in which they could grow up into a civilized, self-governing, prosperous and Christian people through laws to be enacted by their tribal legislators and adjudged and enforced by their tribal courts. That the result of this policy would ultimately break up tribal government and end in the absorption of the Indians by the great body of the citizens of the United States is not denied.

The only and final question to be decided now is, has the time actually arrived when that policy can be consummated at once without detriment to the best interests of the Creek people? All other questions are subordinate and merely incidental to this one great question.

It is proper to recite briefly the history of the Creek people. Prior to the late civil war between the States the Creeks were farmers and herdsmen, and a very respectable portion of them were slave-holders. They lived an easy and rather careless life. Education was not deemed of such high importance then as now. This was also true of the slave-holders of the Southern States. When the civil war broke out our country was between the contending forces. The people, in self-defense, abandoned their homes and their property and fled, some joining the Union army and others siding with the Confederacy. Thus was our country completely abandoned and all our property became a prey to speculators who followed the two great armies solely for gain. At the close of the war when the Creeks returned home they found the country a vast wilderness. The stock had all been driven away, the houses and fences burned by prairie fires, and their former places of residence almost beyond recognition. Then began the struggle for existence. In a country without money, everybody as poor as his neighbor, and no railroads or towns to bring trade or produce market, the people were indeed pioneers.

For nearly ten years after the war there were no railroads nor towns in this Nation. There were, however, established a few neighborhood and two boarding schools, which afforded only a few children the opportunities of acquiring a very elementary knowledge of books. This was the condition in this Nation when in 1889 that portion of Oklahoma which formerly constituted the west half of the Creek country was sold to the United States, and of the proceeds of said sale two millions of dollars was deposited with the United States Government as a permanent fund, and fifty thousand dollars annually of the interest thereon was set apart as a school fund; and immediately thereafter there were erected large brick and frame school buildings, and the neighborhood schools were increased to thrice their former number. Out of a total annual income or revenue of one hundred and sixty thousand dollars, eighty-four thousand dollars of it is expended annually for educational purposes. Every child of school age has now the chance of acquiring an education absolutely free to himself and parents. It is not believed that this system of education can be replaced by one better suited to the Creeks.

There are in this Indian Territory five separate local

governments, neither one nor two of which can constitute a State sufficiently large to be admitted by Congress.

The movement toward a change of government in the Indian Territory should be simultaneous in all these Nations. Any treaty made with these Nations should be uniform in principle and equally protective of their various interests. The Indians will be the principal beneficiaries of any good that may result from a change of government, and they alone will suffer from the confusion and hardships which will necessarily follow the immediate breaking up of the tribal governments. The Congress of the United States has at no time been burdened with petitions from the great body of the white people in this country complaining of grievances or asking for the betterment of their condition; nor has any complaint gone up to Congress from the Indians of this Territory. It is therefore incomprehensible to our people why this great pressure should be brought to bear upon them for the breaking up of their government.

The Commissioners on the part of the United States have threatened to disrupt our government if we do not by treaty at once agree to allot our lands and surrender our right of self-government.

The Congress of the United States has passed an act (Indian Appropriation Bill, approved June 7, 1897) which, after January 1st, 1898, deprives this Nation of the jurisdiction guaranteed to it by treaties. With this flaming sword as an everlasting threat hanging over the Nation, as it were, by a single thread, the Creek Commissioners were induced to sign the Agreement of September 27, 1897. This is a repetition of the coercion under which the Creek Delegation signed the treaty of Ft. Smith in 1866 in which it was agreed for the Creeks to sell the west half of the whole Nation, amounting to three million acres, at thirty cents an acre. There might have been some slight excuse at that time in using coercive measures, but now, thirty odd years since the great civil war ended, we have the right to demand justice and fair play.

It has been announced to be the purpose and desire of the United States to protect the interests of the majority of the Indians by devising a plan for the allotment of lands and by their admission as citizens of the United States. Upon a thorough understanding of the intent and scope of the treaty as interpreted and explained by the Commissioners it was

rejected by a large majority of the members of the Council. No people can be accused of improper motives in an earnest desire to thoroughly consider their condition, and endeavor to stand by those principles of government which have brought them prosperity and contentment. In the position thus taken the Creeks rely upon the honesty and fair-mindedness of the Commissioners of the United States and the members of Congress.

Approved November 3, 1897.

Book B, p. 273.

MUSKOGEE, INDIAN TERRITORY, July 11, 1898.

Hon. Cornelius N. Bliss, Secretary of the Interior.

MY DEAR SIR: Your favor of the 7th inst., addressed to Commissioner McKennen, has been received. The Captain being absent in the field, I have the honor to reply briefly in his stead.

While it is undoubtedly true that under Section 19 of the Curtis Bill the United States is prohibited from making payments of any nature to the tribal governments in Indian Territory, except through the medium of an officer of the United States, I can see no particular reason for delay in making July payments, as none of them so far as I can ascertain, are in the nature of per capita distributions. None of the rolls, with the exception of that of the Seminole Nation, can be completed for several months; but of course the rolls are unnecessary in making the above mentioned payments because they are not per capita payments, and the officer to be designated by you will disburse the money to the individual creditor of the nation.

Admittedly, the enactment of the Curtis Bill will unsettle affairs in this Territory for some time to come, but future conditions cannot be worse than they have for years past, and out of the present inchoate state will certainly come law and order.

It is safe to say that the people will, to a certain extent, *unduly* complain of the present situation, but this is nothing new. Most of the leaders have always been unreasonable, and have persistently, in public and in private, hindered and hampered the work of the government from the beginning, so there is nothing to be lost in this direction.

We have received information directly from Mr. White,

Chief of the Indian Division, that he is coming to the Territory, as your representative, for consultation with the Commission, regarding matters pertaining to the Five Civilized Tribes and the existing situation. We shall be very glad to confer with him, and have no doubt that after due investigation along the lines proposed, your representative will become thoroughly informed as to conditions prevailing here, and will, upon his return to Washington, be able to advise you definitely as to the requirements of the situation.

We expect that Isparhecher, Chief of the Muskogee Tribe, will continue his factious oppositions. It is our intention, within the next few days, to make a formal demand upon him, in accordance with the provisions of Section 21 of the Curtis Bill, for the delivery of the Creek rolls. Undoubtedly the chief will refuse to comply with our demands. We shall then obtain an order from the United States Court, compelling immediate delivery. In event that Isparhecher continues obstinate, the Court will certainly order his arrest for contempt, and thus, immediately, the whole question of authority as between the United States and the Muskogee Nation, will be at issue.

We are advised that Mr. White will arrive at Muskogee Thursday morning of this week. Commissioners McKennon, Needles and myself will at that time be in the interior of the Creek Nation, at work upon the census. It is our intention, however, that one of the Commission, probably myself, will drive in from Okmulgee on Saturday of this week, for the purpose of meeting Mr. White and conveying him to the capital of the nation, where it is intended to hold a conference of the United States officials, including Agent Wisdom, interested in the work prescribed to be done by the Curtis Bill.

Very respectfully yours,
(Signed)

TAMS BIXBY,
Acting Chairman.

Book B, p. 432.

MUSKOGEE, INDIAN TERRITORY, Aug. 6, 1898.

The Honorable the Secretary of the Interior.

SIR: We have the honor herewith to submit for your information and consideration, a letter from Mr. S. T. Bledsoe of Ardmore, Indian Territory, in relation to the wrongful

occupancy of town lots, and other matters. You may remember that I introduced Mr. Bledsoe to you while in Washington as a party representing the town-site interests in the Choctaw and Chickasaw Nations. He is a perfectly reliable and honorable man and what he says is worthy of consideration.

We are informed that cattle men are securing leases of lands, especially from the negroes in the Creek Nation, on the open prairies which they claim to select as their allotments, but of which they have never taken possession, and in this way, the cattle men hope to secure a lease of pastures, thus evading the terms of the Curtis Bill.

We are engaged at work very earnestly on the Creek census and hope during this month to get same ready to make rolls of Creek citizens, as also rolls of Seminole citizens, but we find it a most difficult task, with many intricate and perplexing questions to determine. We have thus far had no help from the Creek Government, the old Chief refusing to give us any aid whatever. Some of the Town Kings, however, have given us assistance.

Judge Clayton came up a few days ago and opened Court and the District Attorney, on behalf of the Commission, asked for an order against Chief Isparhecher, requiring him to turn over to the Commission, the rolls and the records of the Council and of citizenship committees relating to Creek citizenship, and a Deputy Marshal was sent out, with our Secretary, Mr. Aylesworth, to serve the order, which was cheerfully obeyed by the Chief. This was the only way, however, we could induce him to act. We go into the Chickasaw Nation, the last of this month, and will there be engaged in the work of making rolls of Chickasaw citizens and of Chickasaw Freedmen, during the next six weeks thereafter.

The weather is very warm but the members of the Commission and its clerical force are standing the weather pretty well and are in good health.

Respectfully,

(Copy of Letter on p. 17 of Book 36.)

MUSKOGEE, INDIAN TERRITORY, January 23, 1901.

The Honorable the Secretary of the Interior.

SIR: Following is a copy of a dispatch sent you this day:

"United States Marshal here has telegraphed Attorney General, and Indian Agent has telegraphed Indian Commissioner, giving particulars of continued lawless conduct of Snake band Creeks resisting processes and policy of the Government. This is substantially confirmed by verbal communication of office of Chief Porter. Commission has deemed it necessary to detain five appraising parties about entering disturbed district until order is restored, believing it dangerous to life and property, and strongly advises that an exhibition of military force, say one company of cavalry, be made in district. Believe if this is done without delay it will restore normal conditions."

While the Commission has not, by its own agents, made an investigation of the conditions which exist in the region reported to be terrorized by outlaws, it has sufficient reliable verbal information, secured through the office of the United States Marshal, the United States Indian Agent and citizens who have been in that locality, to well assure it that it would be unsafe for its appraisers to enter the section of country infested by the followers of "Snake."

It has, therefore, directed its appraisers who are about entering the Creek Nation on the south, to await further advices from this office.

It is believed that a military display in the country now occupied by the Snake band of Indians will serve to re-instate order, and that the Commission's employees may thereupon at once proceed to their duties.

Very respectfully,

TAMS BIXBY,
Acting Chairman.

(Book 4, p. 95.)

MUSKOGEE, INDIAN TERRITORY, March 25, 1902.

The Honorable the Secretary of the Interior.

SIR: The Commission has arranged to send out into the Cherokee Nation four lightly equipped enrolling parties

commencing April 14, and continuing to the end of June, as per list of appointments herewith enclosed. They will visit the remotest sections of the Nation, the object being to secure the enrollment of the reluctant and obscure full bloods; and there will be with them representatives of the Indian Inspector's Office, with considerable sums of specie to make payments of relief funds. Also information continues to reach the Commission that some of the obstructive Cherokees are continuing to tell the ignorant full bloods that the Commission has no authority to do the work upon which it is engaged, and is not backed therein by the United States Government.

In view of the circumstances stated, and knowing the credulous and impressionable character of the ignorant full bloods, in regard to claims relating to their traditions, the persistent hostility of certain parties, and the fact that the presence of troops is the only evidence of the purpose of the Government that many of those people will readily believe, the request is made that a sufficient number of cavalry be sent to Fort Gibson before April 14th, to enable say eight or ten men to accompany each of the four parties, and yet leave a small squadron of, say, twenty men at Fort Gibson for contingencies.

The Department's prompt attention to this matter is respectfully urged.

Respectfully,

	— — — — —,	<i>Acting Chairman.</i>
(Signed)	T. B. NEEDLES,	<i>Commissioner.</i>
(Signed)	C. R. BRECKENRIDGE,	<i>Commissioner.</i>

Through the Commissioner of Indian Affairs.
1 inclosure. MB-2.

(Book 4, p. 168.)

(Telegram.)

Paid Gov't.

MUSKOGEE, I. T., April 8, 1902.

Secretary of Interior, Washington, D. C.:

Four enrolling parties will attempt to enroll full-blood Cherokees, commencing April fifteenth. They will be in full-blood neighborhoods, where disorder and organized and bitter opposition to enrollment prevails. We think they should be protected from violence and intimidation, and valuable Government records from danger of destruction. Otherwise these parties should not be sent out. We urgently advise that a company or more of United States cavalry be placed at our disposal at once in order that a squad may be with each party and the power and authority of the Government be displayed to these people. Mr. Bixby absent. Please answer.

NEEDLES, *Commissioner in Charge.*
BRECKENRIDGE, *Commissioner.*

O. B. G. R.

Book A, p. 277.

MUSKOGEE, INDIAN TERRITORY, December 4, 1897.

The Honorable the Secretary of the Interior.

SIR: I have the honor to report that the Commission for a month or more, has been engaged in taking a census of Creek citizens, finding this course necessary since the Creek authorities refuse to furnish to the Commission, copies of their rolls, and such copies, if furnished, would not, of themselves, afford the means of making correct rolls of Creek citizenship, and such as will be required in dealing with the Creek people in their changed conditions as contemplated by the United States Government. Since orders were issued by Hon. D. M. Wisdom, pursuant to your instructions, requiring the Creek people to appear before the Commission for enrollment, they have manifested a disposition to obey, and about 11,000 have been enrolled to date. It is thought the enrollment, when completed, will reach

at 15,000. Members of the Commission think this work, in hand, should be pressed to completion, and rolls made as early as possible. No provision, so far, has been made by the tribal authorities to furnish any assistance to the Commission in this work, and they refuse, not only to furnish copies of their citizenship rolls, but refuse to permit the Commission to make copies of them, without expense to the Creek Nation. The members of this Commission hope, however, to make rolls, whether aided by them or not, which will be more nearly correct than any rolls possessed by them, and citizens, as we are informed, have been arbitrarily dropped from the Creek rolls, and many added thereto without right of authority.

We have no information yet as to the result of the vote of the Chickasaw people on the Choctaw-Chickasaw agreement, at the first instant.

The exhaustive and very able opinion delivered by Judge Ringer on Cherokee citizenship yesterday, which is concurred in by Judge Thomas, fully and in every particular sustaining the Commission in its rulings and judgements on applications for such citizenship, rendered in 1893, will doubtless have a very good effect and will materially aid in the future work of adjusting affairs here. It certainly, for the present, puts at rest the vexatious question of citizenship in the Cherokee Nation.

It will unquestionably be necessary that some very clear and definite legislation be passed at the ensuing session of Congress affecting the several tribes in this Territory, and the presence of the Commission in Washington, will, as heretofore, doubtless be desired by the Chairman of the Indian Committees of the Senate and House, and we respectfully suggest that the Commission be not called to Washington until after the holidays, as little will be done by Congress until after that time, and the members of the Commission can be profitably employed here.

Very respectfully,
(Signed)

TAMS BIXBY,
Acting Chairman.

Book K, p. 315.

MUSKOGEE, INDIAN TERRITORY, June 15, 1899.

The Honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt of a letter from the Department, under date of June 7th, pertaining to the establishment in the Cherokee, Choctaw and Chickasaw Nations, of offices for the selection by individual Indians of their prospective allotments, in which it is stated that a single set of photolithographic township plats of the Chickasaw Nation will be forwarded to the Commission at once, and that upon the return to Washington of the Director of the Geological Survey, a complete set, with his signature will be forwarded, in addition.

It is further stated that

"It is not perceived that any serious obstacle prevents the selection of prospective allotments by members who are unquestionably upon some rolls, and whose citizenship is not denied. While the Department must rely to a great extent upon the enlightened judgment of the Commission, yet the suggestion is repeated that it is very desirable that the Individual Indians should have an opportunity of selecting places for their prospective homes, under the provisions of said regulations."

In view of the report heretofore made by this office on the subject, it is not believed that the Department desires that the Commission reaffirm its sincerity of purpose or belief in the impracticability of immediate action in the direction indicated. It is doubtful if a complete and full understanding of the situation in its various phases could be conveyed to the Department through the medium of a correspondence, and without an intelligent understanding of the work in all its details, it is questionable if the impracticability of entering upon this work at the present time can be made clear.

Referring, however, to the statement of the Department above quoted, that

"It is not perceived that any serious obstacle prevents the selection of prospective allotments by members who are unquestionably upon some rolls, and whose citizenship is not denied."

I desire to again respectfully call attention to the fact that

were the Commission at the present time to open offices in the Choctaw and Chickasaw Nations for the selection of homesteads, it would be absolutely without a record pertaining to the citizenship of these nations, the tribal rolls and records made by this office being required by this Commission in its enrollment work in the Choctaw Nation. (See our letter May 27th.) The Commission would therefore be unable to verify applicants' statements as to their names appearing on tribal rolls. Even were a tribal roll available at this time, it does not follow that a person would be entitled to make selection simply because his name appeared on some tribal roll; indeed, many instances are known where persons, without a shadow of a right to enrollment, are recognized citizens and enrolled as such. The data heretofore taken by this Commission in the field is essential in the identification of citizens.

Again, before this duty can be entered upon, it is necessary to transcribe the areas from township plats to diagrams prepared for that purpose, in order that a proper record may be made and kept, as the work progresses. These diagrams will be prepared as soon as the township plats are received, and sufficient clerical assistance can be employed therefor.

Equally cogent reasons exist for deferring the opening of an office in the Cherokee Nation for the selection of allotments. A plan for the prosecution of our work there, however, is under consideration, and will be outlined to the Department in due time.

The fact should not be overlooked that a work equal in proportions and intricacies to that devolving upon this Commission, is susceptible of successful execution only when thoroughly systematized and intelligently directed. The Commission is fully acquainted with existing conditions, has studied the situation and has evolved a general plan for carrying on the work of allotment in its preliminary stages, which has received the approval of the Department. With a proper and vigorous management of details this plan will, in my judgment, accomplish results creditable to the Commission, satisfactory to the Department and equitable and just to the Indians. Before the preliminary work of allotment can be entered upon, certain preparation must be made. A haphazard, unstudied and imperfect method of procedure is incompatible with this plan.

Nevertheless, the Commission is not wedded to any plan

to the exclusion of another, but will cheerfully adopt any method which promises better results, if the Department has such to offer.

Very respectfully,

TAMS BIXBY,
Acting Chairman.

Through the Commissioner of Indian Affairs.

(Book 19, p. 360.)

MUSKOGEE, INDIAN TERRITORY, May 16, 1904.

The Honorable the Secretary of the Interior.

SIR: We have the honor to call your attention to the fact that the last Congress failed to make any provision for the final closing of the citizenship rolls of the Creek Nation, notwithstanding the provision in the Indian Appropriation Act approved April 1, 1904 (Public No. 125), that "said Commission shall conclude its work and terminate on or before the first day of July, 1905, and said Commission shall cease to exist on July 1, 1905."

On January 6, 1903 (I. T. D. 7345-1902), the Department held, relative to Section 28 of the Creek Agreement approved March 1, 1901 (32 Stats. 861), that the rolls of citizenship of the Creek Nation to be prepared by the Commission were not closed under the provisions of law above referred to, and that the Commission was to receive the applications and enroll as citizens of said nation persons who had theretofore been recognized by the tribe as such, notwithstanding that no application had been made by such citizens before the Commission for their enrollment prior to the ratification of said agreement by the Creek tribe.

There are on the tribal rolls of citizens and freedmen of the Creek tribe in the possession of the Commission, about 4500 names of persons who have never applied to the Commission for enrollment, and concerning whom no definite information can be obtained, although special and painstaking effort has been made for the past six months to locate them. It is our opinion from information obtained that nearly, if not all, of these names so listed on the tribal rolls are the names of persons who died prior to April 1, 1899, or are enrolled on the tribal rolls under some other name, or

have removed from the Creek Nation and been enrolled with some other Indian Tribe, or have taken up a residence in some foreign country.

It is considered that applicants for enrollment as citizens and freedmen of the Creek Nation have had sufficient time in which to make application for their enrollment under the Act of Congress of June 28, 1898 (30 Stats., 495), March 1, 1901 (31 Stats., 861), and June 30, 1902 (32 Stats. 500), and unless some limit is placed upon the time within which applications for enrollment will be received, the work of preparing these rolls will be interminable.

The Indian Appropriation Act approved March 3, 1901 (31 Stats. 1073), provides as follows:

"The rolls made by the Commission to the Five Civilized Tribes, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon shall alone constitute the several tribes which they represent; and the Secretary of the Interior is authorized and directed to fix a time by agreement with said tribes, or either of them, for closing said rolls, but upon failure or refusal of said tribes or any of them to agree thereto, then the Secretary of the Interior shall fix a time for closing said rolls, after which no name shall be added thereto."

This authority has not been withdrawn or modified in any way by any subsequent legislation, and as no time has been fixed by agreement with the Creek tribe for the closing of the rolls of citizenship of said tribe it is considered necessary that some action be taken by the Department for the final closing of said rolls.

We therefore recommend that an order be issued by the Secretary of the Interior under the authority of law above quoted directing that the rolls of citizenship of the Creek tribe prepared by the Commission be closed on July 1, 1904, and that the application of no person whomsoever for enrollment as a citizen or freedman of the Creek Nation be received by the Commission after said date.

Respectfully,

(Signed.)

TAMS BIXBY.

(Signed.)

T. B. NEEDLES.

(Signed.)

C. R. BRECKINRIDGE.

Commissioners.

Through the Commissioner of Indian Affairs.

Book 826, p. 367.

MUSKOGEE, INDIAN TERRITORY, January 31, 1907.
Chief Clerk Creek Enrollment Division, General Office.

DEAR SIR: For the information and guidance of the clerks in the Creek Enrollment Division engaged in the preparation of decisions and orders in enrollment cases, your attention is directed to the following instructions which will hereafter govern such work.

Orders dismissing applications for enrollment will be prepared in all cases where the evidence submitted is *clear* and *uncontroverted* that any one of the following facts are true:

First. That the applicant died prior to April 1, 1899.

Second. That the applicant was born subsequent to April 1, 1899, and died prior to July 1, 1900.

Third. That the applicant was born subsequent to July 1, 1900, and died prior to May 25, 1901.

Fourth. That the applicant was born subsequent to May 25, 1901, and died prior to March 4, 1905.

Fifth. That the applicant was born subsequent to March 4, 1905, and died prior to March 4, 1906.

Sixth. That the applicant was born subsequent to March 4, 1906.

The order of dismissal in the cases above referred to will be prepared for the signature of the Commissioner in the following form:

In view of the foregoing, I am of the opinion that there is no authority of law for the enrollment of ——— as a ——— of the Creek Nation, and the application for his enrollment as such is accordingly dismissed.

These orders when signed by the Commissioner will be served upon the applicants or their attorneys, but will not be forwarded to the Department for its approval except in specific cases wherein appeal may be prayed for by the applicants themselves.

Orders dismissing will also be prepared in all cases where, at the time of the filing of the application, the Commissioner had no authority of law for the reception of the same. The order used in such cases will be as follows:

I am therefore of the opinion that no application having been made for the enrollment of _____ as a _____ of the Creek Nation prior to _____, I am now, under the provisions of the act of Congress approved _____ without authority to receive or consider this application for his enrollment, and the same is accordingly dismissed.

These cases will not be sent to the Department unless the date of the filing of the application with the Commissioner is in controversy and there is conflicting testimony or evidence on this point.

There are also certain names listed on old census or field cards or by information, which were so listed by the Commission to the Five Civilized Tribes simply for the purpose of protecting the rights, if any, which certain persons might have whose names appear upon the Creek tribal rolls and for whom no application had been made. In these cases diligent inquiry has been made for many years through letters addressed to the applicants themselves or to other persons who might know of their whereabouts and by field parties operating throughout the Creek Nation, and we have been unable to obtain any information relative to such persons. It will be necessary to take some action disposing of these cases, and an order dismissing in the form which has heretofore been furnished you will be prepared. It will not be necessary in these cases that the order or record be sent to the Department.

In all contested cases where the weight or preponderance of the evidence shows that the applicants come within any one of the classes first above referred to, decisions will be prepared *denying* such applicants, which, when signed by the Commissioner, will be served upon the parties interested or their attorneys, and said decisions, together with the records in the case, will be transmitted to the Department for its consideration.

In all cases where the applicant is found to be entitled to enrollment the usual procedure will be followed, that is, the decision will be served upon the attorney for the Creek Nation or his representative, and the applicant or his attorneys, and in the event the attorney for the Creek Nation files protest, the decision, together with the record in the case, will be sent to the Department, otherwise, protest being waived, the

names of the applicants when found entitled to enrollment will be placed upon a schedule to be transmitted to the Department for its approval.

From the above it will be seen that the distinction to be made between cases in which orders dismissing are to be prepared and those in which decisions denying the applicants are to be prepared is as follows:

Orders dismissing will be prepared in all cases in which the evidence is *clear* and *uncontroverted* that the applicant is not entitled to enrollment by reason of not being in existence on one of the dates required by legislation affecting enrollment of citizens and freedmen of the Creek tribe. Also in cases where applications for the enrollment of applicants were not received by the Commissioner within the time prescribed by law. Also enrollment cases where the parties have been listed from information or from the tribal rolls and no testimony or evidence has been obtained relative to their rights.

Decisions denying the applicants will be prepared in all cases where there is conflict in the evidence, and it is necessary to make a finding of fact on the weight or preponderance of evidence submitted.

Respectfully,

TAMS BIXBY,
Commissioner.

F. E. L.

Book A, p. 45.

— Tams Bixby.

FORT GIBSON, I. T., Oct. 6th, 1897.

John G. Leeber, Esq., Att'y at Law, Muskogee, I. T.

DEAR SIR: All persons entitled to enrollment as Creek Citizens, whether admitted by this Commission or having application for enrollment now pending or otherwise entitled to be enrolled ought to meet us and make application to have their names put on the rolls. This is in answer to your communication of the 5th inst. just received.

Respectfully yours,

(Signed)

TAMS BIXBY,
Acting Chairman.

Book A, p. 163.

(Copy.)

MUSCOGEE, I. T., Nov. 1, 1897.

Hon. Secretary Interior, Washington, D. C.:

The Commission respectfully requests that the Indian Agent at Union Agency be ordered by wire to exercise his authority in aid of the Commission in taking a census and making rolls of Creek Citizens by securing for its use copies of rolls now existing and by ordering all members of the tribe to appear before the Commission for enrollment at Muscogee and at such other places as the Commission may select and to further aid the Commission from time to time as may be deemed necessary and expedient.

TAMS BIXBY,
Acting Chairman.

Off. Business.
Govt. Rate.
Collect.

Book A, p. 156.

MUSCOGEE, INDIAN TERRITORY, November 4, 1897.

Everline Williams, Wybark, Ind. Ter.

DEAR MADAM: Inclosed you will find census notice, showing time and place at which this Commission will appear to hear applications for enrollment in the Creek Nation. You should make application at the nearest point to you.

Yours truly,
(Signed) A. L. AYLESWORTH, *Secretary.*

L. R. S.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, October 25th, 1898.

Hon. Henry L. Dawes, Chairman of the Commission to the Five Civilized Tribes, Pittsfield, Mass.

SIR: Inclosed herewith you will find a letter from John O'Donnell, dated Baum, I. T., Oct. 17th, 1898, which is referred to your Commission for its consideration and appro-

priate action. While it does not appear from his letter just when said O'Donnell was rejected by the Commission, it may be proper to state that in all cases which have been or may be considered by the Commission under the "Curtis Bill," the evidence in each case should be preserved, in order that when the rolls are presented to the Secretary for approval, should the ruling of the Commission be contested in any case, the evidence therein can be presented to and considered by the Department.

Respectfully,

C. N. BLISS, *Secretary.*

Ind. Ter. Div.

685—1898.

Incl.

Book D, p. 263.

MUSKOGEE, INDIAN TERRITORY, November 9, 1898.

S. W. Brown, Esq., Wealaka, I. T.

DEAR SIR: In reply to yours of November 2nd. All of your people who have not been enrolled should come to our office here and enroll. We are glad to know that the Euchees were alive to their interests and voted for the treaty. We are not yet informed as to what has been done about the matter, but should regret to see it defeated, as we think it would be better for the Creek people if they should ratify it.

Very truly yours,

(Signed)

A. S. McKENNON,
Commissioner.

(Copy of Letter on page 10, in Book "G.")

WUSKOGEE, INDIAN TERRITORY, February 14, 1899.

Mr. Edmond Beames, Bokchito, Indian Territory.

DEAR SIR: Your letter of February 10, relative to your citizenship, has been received.

Your property rights will depend, of course, upon your enrollment. In determining your citizenship, this Commission will be governed by the blood and citizenship of your mother.

This, however, will require a personal investigation, and

we would suggest that you personally appear before this Commission at one of its appointments in the Choctaw Nation during the coming summer. A list of these appointments is herewith enclosed.

A special session will be held at South McAlester, beginning March 20, next, and if convenient, you might appear there, and the matter of your citizenship will be taken up.

Yours truly,

T. B. NEEDLES,
Commissioner.

Book "M," page 63.

MUSKOGEE, INDIAN TERRITORY, July 28th, 1899.

Wyatt S. Hawkins, Esq., Limestone, Indian Territory.

MY DEAR SIR: Your letter 17th instant, was forwarded to me and I received it in Washington recently, but had no opportunity of answering until I could get back to the office, and returned only to-day.

The recent instructions of the Secretary of the Interior require that each person shall appear before the Commission for enrollment, and I hope, therefore, that it will be convenient for you and Mr. Baker to appear before us at one of our appointments in the Choctaw Nation, a list of which I enclose.

With very kind regards to you and all other friends with you, I am,

Very truly yours,

A. S. McKENNON,
Commissioner.

Enc.

Book "M," page 395.

MUSKOGEE, INDIAN TERRITORY, August 15, 1899.

R. J. Scott, Esq., Sallisaw, Indian Territory.

DEAR SIR: Your letter of August 7th, addressed to the Hon. Secretary of the Interior has been referred to this Commission. You state that you and your family are Cherokee citizens and that you desire to visit California for the benefit of your health, and inquire if you will forfeit your citizenship by so doing.

This Commission would not regard a temporary absence from the Territory as a relinquishment of citizenship, when occasioned by necessity, although a permanent removal would forfeit rights of citizenship. The most serious feature of such a change of residence as suggested by you is, in the view of this Commission, the possibility of your not being here for enrollment; the Commission is required to enroll citizens upon their personal application. Enrollments cannot be made by proxy, nor by written application; neither can they be made through an agent, except in extreme necessity.

R. J. Scott—2.

The Commission expects to enter upon the work of making the Cherokee rolls within a few months, and the allotment of lands will immediately follow and, if you can avoid leaving the Territory without endangering your health, until such matters are settled, it will doubtless be wise for you to do so.

Under the Rules of the Secretary of the Interior a citizen can make a rental contract for only one year.

Yours truly,
(Signed)

TAMS BIXBY,
Acting Chairman.

Book N, p. 102.

ATOKA, INDIAN TERRITORY, August 28, 1899.

L. D. Horton, Esq., Durant, Indian Territory.

DEAR SIR: In reply to yours of the 19th inst. in which you make a statement of the facts in several cases and asked to be advised whether or not persons will be enrolled under such given state of facts. The Commission cannot undertake to determine any case until the applicant has appeared before it and made his statement under oath of the facts of his case. It will then either enroll him or not. This course is required by late instructions from the Secretary of the Interior.

Very truly yours,
(Signed)

A. S. McKENNON,
Commissioner.

Book N, p. 362.

SOUTH McALESTER, I. T., Sept. 11, 1899.

Mrs. Grace M. Pitchlyn, Caddo, Ind. T.

DEAR MADAM: We have your favor of September 10th enclosing certain papers with request to file same in the case of your application for enrollment as a citizen of the Choctaw Nation. Herewith you will find the same returned to you, as it is the rule of this Commission to file no papers or affidavits similar to these. It will be necessary, if you desire to make further proof as to your rights in the premises, for you to appear before the Commission in person, with such witnesses as you may desire. This Commission will be in continuous session at Muskogee for an indefinite period after we leave our last appointment at South Canadian which closes on the 16th instant.

Very respectfully,
(Signed)

T. B. NEEDLES,
Commissioner.

Enclosure.

Book N, p. 361.

SOUTH McALESTER, I. T., Sept. 11, 1899.

Mr. H. B. Lockett, Duncan, I. T.

DEAR SIR: Enclosed you will find the papers sent us by you in regard to the application of Oza Nichols for enrollment.

The law requires all applicants to appear in person before this Commission, consequently it will be necessary for Mrs. Nichols to appear before us if she desires to be enrolled as a Choctaw citizen. We will be at South Canadian Sep. 14th to 16th inclusive, after that for an indefinite period at Muskogee.

Very respectfully,
(Signed)

T. B. NEEDLES,
Commissioner.

Enclosure.

Book N, p. 433.

SOUTH CANADIAN, IND. TERR., Sept. 15, 1899.

Mrs. Jacob Russell, Spiro, Indian Territory.

DEAR MADAM: In reply to your letter of September 7th, 1899, in which you refer to the refusal of the Commission to enroll you as an intermarried citizen, you having intermarried with a white person who had once intermarried with an Indian, and referring to your letter to the Secretary of the Interior and his reply to you as to the instructions given by him to the Commission. We have to say that the instructions require that each applicant appear in person before the Commission to be examined under oath, and their statements taken down by the Commission. If you are not already satisfied with the action of the Commission, and it did not make a record of your statements, you can, if you wish, appear before the Commission at any time at Muskogee, and it will make the record required by the rules of the Secretary of the Interior.

Very truly yours,
(Signed)

A. S. McKENNON,
Commissioner.

Book N, p. 425.

MUSKOGEE, INDIAN TERRITORY,
September 19, 1899.

Mrs. Miles, Box 17, Wilburton, Indian Territory:

I am in receipt of your letter of September 6 asking if your husband can be identified by a Choctaw, and stating that, if not, you will go to the Cherokee Nation and secure some one. This Commission is unable to determine from your letter what you desire to accomplish. It does not appear from your statement in which Nation citizenship is claimed or who the claimant is. If you or your husband is a member of either one of the Five Civilized Tribes it will be necessary for you to appear before this Commission in person for enrollment; your right thereto can only be determined upon an oral examination. If citizenship in the Cherokee Nation is claimed no steps need be taken by you at present for the reason that the enrollment of the Cherokees has not yet been reached by the Commission. This duty will be en-

red upon, in all probability during the early part of next
 ar, and appointments will be fixed throughout the Chero-
 e Nation at which citizens may appear for enrollment. If,
 the other hand, citizenship is claimed in the Choctaw
 ation it will be necessary for applicants to appear before
 e Commission at an early date. This can be done at any
 e during the present month at Muskogee, but if it is more
 nvenient for you to appear at Tushkaherma you may do
 during the session of the Choctaw legislature in the month
 October, at which time the Commission will be in session
 ere also.

Yours truly,
 (Signed)

TAMS BIXBY,
Acting Chairman.

Book R, p. 90.

MUSKOGEE, INDIAN TERRITORY,
 November 22, 1899.

on. D. M. Hodge, Chairman, Okmulgee, Indian Territory.

DEAR SIR: I am in receipt of your letter of November
 1st, in which you state that the Council is preparing to
 ke a census of the citizens of the Creek Nation, and request
 at there be forwarded to you a blank such as is used by
 e Commission in enrollment work, as a guide, also a blank
 f the form used by the Commission when citizens make ap-
 plication for an allotment.

In response to your letter I have to state that any census
 r citizenship roll or list which might be prepared by the
 ribal authorities of the Creek Nation, would not be recog-
 ized by the Government of the United States, and the Com-
 mission cannot lend its aid to any undertaking which con-
 emplates the disbursement of tribal funds for that purpose.

The blank "application for allotment" can be used only
 t the land office of the Commission, and would be of no
 alue in the hands of citizens otherwise.

Yours truly,
 (Signed)

TAMS BIXBY,
Acting Chairman.

Book R, p. 436.

MUSKOGEE, I. T., December 4, 1899.

Edward Ross, Esq., Oakrey, I. T.

DEAR SIR: Your letter of November 30th is received. The Commission is unable to determine whether Bettie Grayson is entitled to enrollment in the Creek Nation until she personally appears before the Commission for examination. If her name appears upon the tribal rolls she should come to Muskogee and give such information as will enable the Commission to determine whether she is eligible to enrollment or not.

Yours truly,
(Signed)

TAMS BIXBY,
Acting Chairman.

Book R, p. 419.

MUSKOGEE, I. T., December 4, 1899.

Frank Carolina, Esq., Oakrey, I. T.

DEAR SIR: Your letter of November 30th is received.

Application for enrollment cannot be made by mail. If you and your family are entitled to enrollment in the Creek Nation it will be necessary for you to appear before the Commission in Muskogee for that purpose. If you are not a recognized citizen and duly enrolled on tribal rolls it will be useless for you to make the trip to Muskogee as the Commission has no authority to consider original applications for citizenship. If you desire any further information it will be given you on application.

Yours truly,
(Signed)

TAMS BIXBY,
Acting Chairman.

(Copy of Letter on Page 53, Book "U.")

MUSKOGEE, INDIAN TERRITORY, December 23, 1899.

J. W. Lasiter, Esquire, Alvord, Texas.

DEAR SIR: Your letter of December 20th is received, asking if you have been enrolled by this Commission as a Chero-

citizen. In response to your inquiry, you are informed the Commission has not yet reached the work of making roll of Cherokee citizens, and your right thereto cannot, therefore, be determined at this time. The Commission expects to take a census of Cherokee citizens early next year, and persons entitled thereto will be required to appear before the Commission for oral examination upon which their rights of enrollment will be determined.

I may state, however, for your information and protection, that if your name does not appear on the tribal rolls, and if you are not recognized as a citizen of that tribe, it is now too late for you to participate in the distribution of tribal property. Only those can be enrolled whose right to citizenship has heretofore been established.

Yours truly,

TAMS BIXBY,
Acting Chairman.

A.

(Copy of Letter on Page 97, Book "U.")

MUSKOGEE, INDIAN TERRITORY, December 23, 1899.

M. Wood, Esquire, Boggy Depot, Indian Territory.

DEAR SIR: Your letter of December 21st is received. You inquire whether you may yet be enrolled as a citizen of the Cherokee Nation, stating that you were ill at the time the Commission was taking a census.

In response to your letter, you are informed that the Commission has not yet entered upon the work of making a roll of Cherokee citizens. The plans of the Commission at present are to enter the Cherokee Nation next spring, and all Cherokee citizens will be required to appear in person and give the necessary information to enable the Commission to determine whether they are entitled to enrollment. The dates and places for such hearings have not yet been fixed, but due notice thereof will be given through the newspapers and otherwise.

I may add, however, that if you are not now a recognized citizen of the Cherokee Nation and enrolled by the tribe as such, the mere fact that you possess Indian blood would not entitle you to enrollment. Neither this Commission nor any

other tribunal has now authority to hear and determine original applications for citizenship.

Yours truly,

TAMS BIXBY,
Acting Chairman.

(Copy of Letter on Page 191, Book "U.")

MUSKOGEE, INDIAN TERRITORY, December 27, 1899.

Janetta Grounds, Okmulgee, Indian Territory.

DEAR MADAM: Referring to your letter of October 31st, which was received at this office December 21st, and also in response to your letter of December 26th, received this day, I have to inform you that the article referred to in the *Globe-Democrat* does not in any way affect your right or the rights of your children to enrollment. From the information which the Commission has been able to secure, it appears that you are entitled to enrollment as a citizen of the Seminole Nation, and it will therefore be necessary for you to appear before the Commission and make application for enrollment. You should do this during the month of February next at Muskogee.

Yours truly,

TAMS BIXBY,
Acting Chairman.

(Copy of Letter on Page 107 in Book "V.")

MUSKOGEE, INDIAN TERRITORY, January 4, 1900.

Mr. E. P. Scott, Paris, Texas.

DEAR SIR: Your letter of January 1st is received. You state that some Choctaw Freedmen, also four Choctaw Indians, have applied to you for information with reference to enrollment. These persons, if entitled to enrollment, will be required to appear before the Commission in person for oral examination, upon which their rights will be determined. The Indians cannot be heard in an original application for citizenship; that is to say, if their names do not appear upon the tribal rolls, and if they are not recognized citizens of the Choctaw Nation, the Commission has not authority to enroll

hem, and any time or money which they might expend in an effort to secure such a status would be wasted. If they are recognized citizens of the Choctaw Nation, their names may be reported to the Commission, with their places of residence, and proper steps will be taken by the Commission to see that they are enrolled. The Commission cannot, of course, determine whether the Freedmen are eligible to enrollment without an examination.

Yours truly,

TAMS BIXBY,
Acting Chairman.
A.

(Book 7, p. 263.)

Special Dispatch to *The Times*.

WASHINGTON, D. C., April, 1900.

The insertion in the Indian Appropriation Bill of a paragraph conferring upon the Dawes Commission final jurisdiction in all citizenship cases in the Indian Territory, promises to result in a pretty contest between the Secretary of the Interior Hitchcock and Mr. McKennon, of the Dawes Commission.

As already stated in these dispatches, the Indian Committee of the Senate, at the request of Mr. McKennon, inserted an apparently harmless provision in the Indian Appropriation Bill, under the guise that it would expedite and facilitate the settling up of affairs in Indian Territory, but which, in effect, changes the entire order of affairs in contested citizenship cases and deprives the Secretary of the Interior of all authority vested in him by the Curtis law and other statutes. When the provision referred to was incorporated in the bill, no member of the committee contemplated that so innocent appearing paragraph could have such a far-reaching effect. The action was taken at the request of Mr. McKennon, who insisted at the hearing before the committee that such a provision was necessary to properly expedite the citizenship cases in the Territory. When the full meaning of this provision became known, however, it created a sensation.

Secretary Hitchcock, who is familiar with the charges against the Commission in the adjudication of these cases,

has in the past year, been compelled on several occasions to severely reprimand the members of the Commission for their assumption of authority in power. The fight commenced last spring when the Dawes Commission refused to obey the instructions of the Interior Department in making records of all citizenship cases presented to them, in order that the Secretary might have opportunity for final review. Their refusal on that occasion resulted in the issuance of a stinging rebuke which the members of the Commission have never forgotten, and which today, is like a festering thorn in their sides. Secretary Hitchcock has at all times insisted that in the settlement of these disputed questions of citizenship, which involved the homes of the people of Indian Territory, that they should receive the most careful consideration, and be subject to the closest scrutiny, not only by the Commission, but by the Department, acting as a final court of review to insure absolute justice to all. This idea was not in consonance with the plans of the Commission, which body has at all times, objected to any person or tribunal reviewing their decisions. Accordingly, they carried their case to Congress and under the guise of expeditious legislation secured the insertion of the paragraph above referred to, which, if accepted, would tie the hands of the Department and the courts.

Secretary Hitchcock, however, does not propose to have the Dawes Commission, who are his subordinate officials, thwart his wishes and instructions and tie his hands, without a contest. Accordingly, he has accepted their challenge and entered the fight in earnest. In a letter written to a member of the Senate Committee on Indian Affairs in answer to certain questions, Secretary Hitchcock says:

"You request an expression of opinion from me upon the following points:

1. Do its provisions deprive the Interior Department of its revisory power over the rolls prepared in the first instance by the Dawes Commission?

2. Does it change the laws or affect the rulings of court under which names have already been placed upon the rolls by the Dawes Commission, and are entitled to be so placed?

3. Will it make the action of the Dawes Commission final and conclusive?

4. In so far as the provisions refer to the Missis-

Mississippi Choctaws, is it limited in its action to the Mississippi Choctaws remaining in Mississippi, or does it include the Mississippi Choctaws who have of recent years moved into the Indian Territory?

5. Will it finally deprive of all rights of citizenship in the Cherokee Tribe persons who have by the findings of masters been entitled to be placed upon the rolls, but who have not been so placed because of the action or want of action of the Dawes Commission or of the courts?

6. Will it finally by the action of the Dawes Commission, divest of their property, any Indians entitled thereto?

7. In your judgment, should the refusal of the Dawes Commission to entertain applications of persons for enrollment, who have been recognized as members of the tribe in the Indian Territory and duly and lawfully enrolled as such?"

In order to properly answer your questions, a brief reference is necessary to the action of the Department in executing the provisions of section 21 of the act of Congress, approved June 28, 1898 (30 Stats., 495), prescribing the manner in which the Commission to the Five Civilized Tribes shall make rolls of citizenship of said tribes.

On March 17, 1899, pursuant to a request of the Department dated December 8, 1898, the Assistant Attorney General for this department rendered an opinion referring to the provisions of the several acts of Congress creating said Commission and continuing it in the discharge of its duties, and in said opinion he states that said act of June 28, 1898,

"prescribes the manner in which the Commission is to make rolls of citizenship of the several tribes, and that all names found to have been placed upon the tribal roll by fraud or without authority of law, shall be eliminated, and then declares:

"The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent."

* * * * *

"The Commission was authorized and directed to enroll the persons indicated, and to investigate the right of all other persons whose names are found upon any tribal roll, and to omit all such as may have been placed there by fraud or without authority of law. They were not authorized to add any name not found upon some roll of the tribe except those of descendants of persons rightfully upon some roll, and persons intermarried with members of the tribes and therefore lawfully entitled to enrollment.

"The rolls so made by the Commission are to be final 'when approved by the Secretary of the Interior.' This approval being required to give the quality of finality to the rolls, it follows necessarily that the Secretary of the Interior is clothed with some legal discretion and authority in granting or withholding his approval, and that he has a power of supervision or review over the acting of the Commission in preparing the rolls. This power of supervision and review extends to everything done by the Commission in the way of placing names upon or withholding names from the rolls which depends for its final sanction and effect upon the approval of the rolls by the Secretary of the Interior, but it does not include or authorize a re-examination of the decision of the Commission from which an appeal to the court was provided for and which therefore became final in the absence of such a decision of the court upon such an appeal. It does, however, enable the Secretary to see that any individual entitled to enrollment under any such final decision is placed upon the roll, and that any name placed thereon in disregard of any final decision is stricken therefrom."

This opinion was duly approved by the Department. On August 8, 1898, the Department approved regulations governing said Commission in its enrollment of members of said tribes, in which it is stated:

"The rolls so made up by your Commission must, to become final, receive the approval of the Secretary of the Interior. It will, therefore, be necessary for you to make a record in all cases sufficient to enable this (Indian) office and the Department, to take in-

telligent action in the premises, and especially in those cases where your decision either for or against the right of any person to have his name appear upon the rolls is complained of.

"For the purpose of this record you will require each applicant for enrollment to present himself in person before the Commission, at one of its appointments within the tribe in which said applicant claims right to enrollment, for examination, under oath, his statements to be taken down by the Commission, upon which the Commission will determine his rights to enrollment, and such record and action of the Commission will be preserved and transmitted with the rolls to be considered by this office and the Department when the rolls made by the Commission are submitted for the approval of the Secretary of the Interior."

On December 26, 1899, the Department rendered a decision in which a reference was made to said opinion of the Assistant Attorney General, and it was stated:

"A fair interpretation of the opinion of March 17, 1899, by the Assistant Attorney General is that the question of citizenship cannot be re-opened by new applications; and that only citizens especially provided for in the act of June 28, 1898, can be enrolled. All applicants for enrollment must, under the regulations approved August 8, 1898, present themselves in person, and whenever it appears to the Commission that it is without jurisdiction, it should deny the application and should file and retain such papers as have been presented in support of the application, and should make a complete record of the matter, explicitly stating therein the grounds upon which the applicant is denied, and should advise the parties in interest, in writing, of the decision, in order that they may understand fully the cause of rejection, and in order that the matter may be considered by the Secretary of the Interior when the rolls are presented for approval."

In view of the legislation heretofore enacted, and the action of the Department thereunder, it is considered essential

and necessary for the protection of all parties in interest that the action of said Commission shall be subjected to the supervisory authority of the Secretary of the Interior, and the Department distinctly object to that portion of said amendment which declares that the action of the Commission in refusing applications of persons to be enrolled "shall be final."

In answer to your specific question you are advised that the first question must be answered in the affirmative.

The answer to the second question must also be in the affirmative. Said section 21 declares that said Commission

"shall investigate the right of all other persons whose names are found on any other rolls, and omit only such as may have been placed thereon by fraud or without authority of law, enrolling only such as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to citizenship under Cherokee law."

The amendment declares that

"Said Commission shall not receive the application of any person for enrollment as a member of any tribe in Indian Territory who has not been a recognized citizen thereof, and duly and lawfully enrolled or admitted as such."

apparently omitting from the consideration of the Commission any application by "descendants born since such rolls were made, with such intermarried white persons as may be entitled to citizenship under Cherokee laws."

The third question must be answered in the affirmative, as far as it relates to the refusal by said Commission of any applications made to it by persons claiming the right to be enrolled as citizens of said tribes.

Your fourth question must be answered in the negative; for the reason that the amendment expressly excluded the Mississippi Choctaws from its provisions.

In answer to your fifth question, you are advised that it would depend upon the action of said Commission what effect it would have upon the rights of individual Cherokees,

the enrollment of which has not yet commenced, under the provisions of said section 21 of the "Curtis Act."

The answer to your sixth question must be that it will depend upon the action of the Commission whether any Indians would be divested of their property for the reason that the refusal of the applications cannot be reviewed by the Secretary.

Your seventh question appears to be incomplete. If you intend to inquire whether "The refusal of the Dawes Commission to entertain applications of persons for enrollment who have been recognized as members of the tribe in the Indian Territory, and duly and lawfully enrolled as such, should be subject to the review of the Secretary, the answer would be in the affirmative.

Your attention is also invited to the recommendation of the Department relative to said proposed legislation, in which the conclusion of the Commissioner of Indian Affairs was concurred in, namely, that Congress should be requested to strike out said provisions from said bill.

This altercation calls attention forcibly to the method adopted by the Dawes Commission of keeping the records of all cases which have been disposed of by the Commission. A card index has been kept of every applicant examined. The names of those who have been found duly entitled to enrollment have been placed upon red cards; those applicants whose rights have not been clearly established to the satisfaction of the Commission have been listed on white cards, while the names of all applicants rejected have been placed upon blue cards. Those cards which have been appealed to the Federal courts in the Territory, and where orders have been issued to the Commission to place the petitioners upon the rolls still remain on the white or doubtful cards.

It is estimated that the number of court orders thus issued in the Territory, aggregate about 1,800. The number of cases pending before the courts now, number about 5,000. Should the paragraph inserted in the Indian Appropriation Bill, giving the Dawes Commission final jurisdiction, become a law, these court orders could be nullified and the doubtful applicants rejected and thus deprived of any source of redress.

The importance of the question to the people of the Territory becomes at once apparent.

(Book 8, p. 192.)

MUSKOGEE, INDIAN TERRITORY,
April 21, 1900.

The Commissioner of Indian Affairs.

SIR: The Commission is just in receipt of your letter of April 17th, 1900, inclosing copy of Bill S. 2875, "To amend an act of Congress, dated June 28, 1898, so as to provide for additional enrollment of Cherokee, Choctaw, Chickasaw and Creek Indians now residing in Indian Territory, and for other purposes," with the request that the Commission report its views thereon. Under the act of Congress, June 10, 1896, the Commission to the Five Civilized Tribes was authorized to receive, consider and act upon applications for citizenship in the several tribes in Indian Territory. All applications were to be filed within ninety days from the date of said act and the Commission was required to pass upon each application within ninety days after it was filed. The tribal authorities were also authorized, within said time, to receive applications for admission to citizenship and they were required to pass upon same within thirty days after the applications were filed. During the ninety days during which applications might be so filed, the Commission received and filed about 7,500 applications for citizenship in the several tribes, embracing probably 75,000 people, all of which were passed upon and applicants either admitted or rejected. No applications were made to the tribal authorities under such act, except, possibly, a few to the Creek Citizenship Commission, for the reason that no other tribe had, in existence a Commission or court authorized to receive and consider such applications. All applicants had the right of appeal to the United States Court in Indian Territory within sixty days after date of decision by the Commission, and, failing to appeal within said time, the judgments became final. The tribes had a like right of appeal. Many appeals were taken to the United States court by applicants and a few by the tribes, all of which have been disposed of by the court and the applicants either admitted to citizenship, or denied same, in the tribes into which they sought admission. It was, evidently, the purpose of this legislation to afford all persons who believed they were entitled to citizenship, either by reason of blood or otherwise, an opportunity

to be heard and to make a final ending of the question of citizenship in the several tribes in order that final rolls of citizens might be completed, preparatory to allotment of lands and distribution of moneys belonging to the tribes, and it is so held by the Interior Department.

It is a well-known fact that the persons seeking the legislation referred to in the bill under consideration are, practically, white people with but a small quantum of Indian blood, if any, and that the valuable landed estates, with the large moneyed interests, are strong stimulants for such persons to seek the right to share this property. This bill simply seeks to open up the question of citizenship in the several tribes, and if this should be done, the number making application will be much greater than heretofore and the question of making final rolls of the several tribes, as contemplated by former legislation, would be utterly defeated and great injustice done to the Indian citizens composing these tribes, and in few cases, if any, would the persons admitted to citizenship be rightfully entitled to share in the said property. The work of settling the question of citizenship in the several tribes would be almost interminable and the allotment of lands and the distribution of moneys for which the Government has already, and is still, expending so much money, would be delayed indefinitely.

It is the opinion of this Commission that nothing contained in this bill should be enacted into law.

Very respectfully,

(Signed)

TAMS BIXBY,
Acting Chairman.

Book 35, p. 55.

MUSKOGEE, INDIAN TERRITORY,
January 17, 1901.

The Honorable the Secretary of the Interior.

SIR: The Commission has the honor to acknowledge the receipt of a letter to the Department from S. S. Bluejacket and Thomas Dougherty, under date of December 31st, 1900, and endorsed by Acting Secretary Ryan: "For consideration, report and recommendation."

Messrs. Bluejacket and Dougherty purport to represent the Shawnees. They state that a good many members of that

branch of the Cherokees have been put upon the "doubtful list;" that the Commission has "announced that those on the doubtful list, and those who desire to prove their citizenship will have to appear before it at Muskogee, Indian Territory, sometime in the month of January." They further state that "A great many live over one hundred miles away, and are not financially able to make the journey and wait until their turn comes for a hearing before the Commission. A still greater number are totally unable to hire an attorney to represent them before the Commission." * * *

In this connection they desire that the Commission "modify its announcement with regard to the manner and time and place of receiving proof." * * * Then they ask that it be allowed for "these people who show satisfactorily that they are unable to go to Muskogee to show by affidavits their right to citizenship," * * * which evidence they, the correspondents, ask to be allowed to present to the Commission, as representatives of such applicants.

Reply is made to these points in the order in which they have been given, and they are replied to somewhat fully, as representations of this character should, doubtless, be so dealt with at this time.

1. The Commission has no information, official or otherwise, that these persons represent the Cherokee Shawnees, or that those Indians have ever selected, or thought of selecting anyone to represent them. No occasion for their doing so is known to the Commission.

2. The Commission has never made any such announcement as that attributed to it, or any official announcement of any character, relating to the taking up of the "doubtful cases," beyond saying to individual applicants at the time of their applications, that the case would be considered at some convenient future time, and that the decision of the Commission would be made known to them.

Such cases, for the most part, are already made up and only await fuller consideration by the Commission than could readily be given at the time, or they await only some official paper to be supplied to complete the case.

3. No separate roll is kept of the doubtful Shawnees' cases, and the status of such Indians does not call for such treatment. They are simply a part of all the Cherokee doubtful cases. The writer however, who participated in all such enrollments, is sure, from his experience, that there are very

few of these cases. The amplest opportunity has been afforded for all Shawnee Cherokees to be enrolled. The section where they live was covered by really superfluous appointments, as it turned out; no opposition to enrollment was manifested by this limited class of Cherokees, and there is every evidence that the work with them has been very complete.

4. There being no such announcement as that indicated by the writers, no modification can be made. When we begin the consideration of these cases we can definitely tell the extent and character of their needs. When that time comes (and it cannot now be definitely indicated) the Commission will, by its proceedings, indicate a course of procedure. If that course should not appear just and reasonable, it would then, of course, be subject to complaint and amendment.

5. As to persons showing their "right to citizenship," and by "affidavits," it should be observed, first, that the Commission is not engaged in a proceeding to determine a "right to citizenship," but is making a roll of those who have already acquired that right and are shown to now possess it. Second, proof by affidavit is not the character of proof contemplated in these proceedings by either the law or regulations. The requirement that we shall make these rolls "descriptive of the persons thereon," and are given authority to require "all citizens * * * to appear" (act of June 28, 1898, sec. 21), in order to carry out the very careful injunctions of the law, and the well-known insistence of the Department requiring all citizens to appear "in person," where such can possibly be done, all preclude the loose form of evidence desired by the writers. Even if such evidence was permissible, it would be most unadvisable, for it would open the door to endless labor, and doubtless, to great frauds. It is to avoid this, as well as to comply with the law, that the Government has gone to the great expense of the policy of local appointments of its enrolling party, giving all citizens ample chance to apply for enrollment, and substituting personal testimony and examination for the proposed method of proof.

It is respectfully recommended, in conclusion, that the Department, in replying to the correspondents, refrain from addressing them or in any way recognizing them in the capacity in which they sign themselves and which they

claim. Any recognition of this status could be used to unduly impress ignorant claimants, most, if not all, of whom would have no occasion in fact to employ these or any other lawyers or persons in these proceedings.

2d. That Messrs. Bluejacket and Dougherty be informed that the Commission has not yet fully determined its course, nor issued any formal announcement of its purposes in regard to "doubtful" cases, and that nothing definite can be stated in regard to that branch of the work of enrollment until it is reached in its regular order.

3d. It may be stated, however, that in the main, such proceedings as they seem to contemplate are by no means probable, as the present work of the Commission is not to determine the "right to citizenship" of any person, but only the right to *enrollment* of those who are *already* citizens; and such cases are generally already made up and ready for consideration and decision when they can be reached by the Commission. The Commission is mindful of the rights of applicants for enrollment, and in any case where special evidence or argument appears necessary, the applicant will be given timely notice by the Commission so as to enable him to take whatever steps he may deem necessary for the further protection of his interests.

4th. If there should appear any general need for people to appear before the Commission, this body should be informed of the fact, with a view to having local appointments made for the convenience of the people, as has been done throughout the course of this enrollment, and as is still contemplated by the Commission. This is all the more desirable as the law contemplates proof of existing citizenship by the rolls and the personal appearance of the citizens, and not by affidavits and similar evidence as might be the case in original proceedings to secure recognition of a "right to citizenship."

5th. In regard to their desire to be allowed to represent claimants before the Commission, the right is now open to all reputable attorneys, and has never been denied to any.

In the remarks upon this letter, which is hereby returned I have tried to indicate, in addition to replying to the particular points involved, the necessity, now growing more urgent, to guard against the efforts of interested parties to institute frivolous proceedings for purposes of delay and to

in points of advantage for the purpose of continuing to
 upon an ignorant and deluded class of people.

Very respectfully,

Your obedient servant,

C. R. BRECKINRIDGE,
Commissioner.

Through the Commissioner of Indian Affairs.

Enc. 501.

Book 41, p. 106.

MUSKOGEE, INDIAN TERRITORY, March 2, 1901.

The Honorable the Secretary of the Interior.

SIR: I have the honor to submit herein below a report
 the work done under the direction of the Commission to the
 the Civilized Tribes during the month of February, 1901.

* * * * *

CREEK SELECTION OFFICE.

During the month of February, 1901, there were two
 hundred and fifteen applications for allotment presented to
 the Muskogee Land Office. Of this number seventy-two
 were in the form of applications to have certain lands re-
 voked pending the ratification of the Creek Agreement and
 on which these applications depended to become effective.
 There were ten cases in which adjustments were made
 owing to conflicting improvements, which adjustments were
 made without contest.

While a slight increase in the number of applications is
 shown over the past few months, the Commission has de-
 cided to remove the Muskogee Land Office to Okmulgee,
 during the month of March, and to make an effort to reach
 all of the remaining citizens in the immediate western and
 northwestern territory.

In this connection it is proposed to place several parties
 in the field for the purpose of locating these people and
 making every effort possible to afford them an opportunity of
 rolling and filing their selections.

* * * * *

Respectfully submitted,

(Signed)

TAMS BIXBY,
Acting Chairman.

Through the Commissioner of Indian Affairs.

(Book 42, p. 57.)

OKMULGEE, INDIAN TERRITORY, March 6, 1901.

Mr. Timmie Fife, Sapulpa, Indian Territory.

DEAR SIR: Enclosed herewith you will find a list of the citizens of Hitchetee town, who have not yet enrolled or selected allotments.

The Commission to the Five Civilized Tribes has established the enrollment division and land office for the Creek Nation at Okmulgee, where it will be located until and including the 27th day of March. The Commission desires that all Creek citizens who have not been enrolled and received allotments prior to this time, shall do so as soon as possible. This work must be finished immediately, and the Commission requests that you assist it by going among your people and urging them to come to Okmulgee before the 27th of March for the purpose of enrolling and taking their allotments.

If you will call upon one of the appraisement camps under the direction of the Commission, and present this letter, arrangements will be made by the appraiser in charge of the camp, to pay you for your services at a reasonable rate.

Please acknowledge receipt of this list and letter at your earliest convenience, and notify the Commission whether or not you will undertake to see each citizen whose name is on same, stating also, the date when you will begin work.

There will be sent you under separate enclosure, hand bills which please post in conspicuous places.

Yours very truly,

(Signed)

TAMS BIXBY,

Acting Chairman.

Enc.

Book 42, p. 55.

OKMULGEE, INDIAN TERRITORY, March 6, 1901.

Jesse Allen, Esq., Bristow, Indian Territory.

DEAR SIR: The Commission to the Five Civilized Tribes has established the enrollment division and land office for the Creek Nation at Okmulgee, where it will continue to be located until and including the 27th day of March. The Commission desires that all Creek citizens who have not been

enrolled and received allotments prior to this time shall do so as soon as possible. This work must be finished immediately, and the Commission requests that you assist it by going among your people and urging them to come to Okmulgee before the 27th of March.

If you will call upon one of the appraisement camps under the direction of the Commission, and present this letter, arrangements will be made by the appraiser in charge of the camp to pay you for your services at a reasonable rate.

Please acknowledge receipt of this letter at your earliest convenience, notifying the Commission whether or not you will be able to assist, as indicated above.

There will be sent you under separate enclosure hand bills, which please post in conspicuous places.

Yours very truly,
(Signed)

TAMS BIXBY,
Acting Chairman.

(Book 42, p. 60.)

OKMULGEE, INDIAN TERRITORY, March 6, 1901.

THOMAS Wesley, Esq., McDermott, Indian Territory.

DEAR SIR: The Commission to the Five Civilized Tribes has established the enrollment division and land office for the Creek Nation at Okmulgee, where it will continue to be located until and including the 27th day of March. The Commission desires that all Creek citizens who have not been enrolled and received allotments prior to this time shall do so as soon as possible. This work must be finished immediately, and the Commission requests that you assist it by going among your people and urging them to come to Okmulgee before the 27th of March.

If you will call at one of the appraisement camps under the direction of the Commission, and present this letter, arrangements will be made by the appraiser in charge of the camp to pay you for your services at a reasonable rate.

Please acknowledge receipt of this letter at your earliest convenience, notifying the Commission at this place whether or not you will be able to assist, as indicated above.

There will be sent you under separate cover hand bills, which please post in conspicuous places.

Yours very truly,
(Signed)

TAMS BIXBY,
Acting Chairman.

(Book 42, p. 58.)

OKMULGEE, INDIAN TERRITORY, March 6, 1901.

Mr. John Jacobs, Town King, Holdenville, Indian Territory.

DEAR SIR: Enclosed herewith you will find a list of the citizens of Tuckabache town who have not yet enrolled or selected allotments. The Creek enrollment division and land office will be located at Okmulgee from March 6th to March 27th, inclusive, and the Commission desires that as many people be enrolled and receive allotments during that time as possible. In order to accomplish this the Commission respectfully requests that you go out among your people and urge them to come to Okmulgee before the 27th of March. You will be paid for your services at the rate of \$2 for each day you work. It is presumed that you will be able to accomplish this work in at least a period of ten days. If you should not be able to finish this work in ten days please notify the Commission at this place for further instructions.

We are sending you today, under separate cover, twenty-five hand bills, which please post in conspicuous places.

Please acknowledge the receipt of this list at your earliest convenience, and notify the Commission whether or not you will undertake to see each citizen whose name is on the enclosed list, stating also the date when you will begin work.

Yours very truly,

(Signed)

TAMS BIXBY,
Acting Chairman.

2 enclosures.

(Book 43, 213.)

OKMULGEE, INDIAN TERRITORY, March 11, 1901.

Mr. John D. Brown, Shawnee, Oklahoma.

DEAR SIR: The Commission is in receipt of your letter of March 6th, 1901, in which you inquire what action the Commission will take in the matter of application for allotments of land in the Creek Nation made by certain Indians heretofore claiming to be Shawnees, and who have received allotments of land in Oklahoma.

In reply thereto you are advised that such applicants will

be obliged to appear in person before the Commission for examination under oath as to their rights in the Creek Nation, and until such time as their cases have been properly presented and considered the Commission will be unable to deny or indicate the status of their claims.

Yours very truly,

TAMS BIXBY,
Acting Chairman.

(Book 43, page 231.)

OKMULGEE, INDIAN TERRITORY, March 14, 1901.

Hon. Pleasant Porter, Chief of Muskogee Nation, Muskogee, Indian Territory.

MY DEAR GOVERNOR: I am advised that you have agreed to look after the enrollment of the following-named citizens of Big Spring Town:

Eliza Reynolds.	Nora Smiley.
Lewis Reynolds.	Lottie.
David Reynolds.	Earnest.
Jerry Reynolds.	Allen.
Lee Henry.	George Everett Foreman.
Edward Porter.	Maggie Bell Foreman.
Ben E. Porter.	Ruth Foreman.

Please advise me upon receipt of this communication whether or not I am correctly informed regarding your intentions relative to this matter. As you are, of course, aware, we are endeavoring to secure the enrollment of every citizen who has not, prior to this time, appeared before the Commission.

We are preparing lists of the unenrolled of each town and sending out special agents to bring in the delinquents. We trust that you will do everything in your power to induce the citizens named above to appear before the Commission immediately, for enrollment.

Sincerely yours,

TAMS BIXBY,
Acting Chairman.

PARIS, TEXAS, Apr. 5th, 1901.

To the Hon. Dawes Commission, Muskogee, I. T.

SIRS: I am through with U. S. court at this place and am ready now to call convention of the Euchees by the 16th of Apr.

I will be very glad to know if you can have a man come out there and enroll what had not been enrolled. The convention will be held four miles south of Killyville.

Respectfully,
(Signed)

N. G. GREGORY.

(Copy of Letter on Page 421, Book 46.)

MUSKOGEE, INDIAN TERRITORY,

April 11, 1901.

Mr. Noah G. Gregory, Red Fork, Indian Territory.

DEAR SIR: The Commission is in receipt of your letter of April 5, 1901, in which you state that you are now ready to call a convention of the Euchees by the sixteenth of April, and desire to know if the Commission can have a man at that place to enroll those members of that town who have not as yet appeared before the Commission.

While the Commission would be greatly pleased to comply with your request in the matter, business in the office of the Creek Enrollment Division is such, at the present time, that it would be impossible to make any outside appointments prior to May first. You are advised that the Commission will be at Okmulgee, Indian Territory, on May 6th, for the purpose of enrolling all citizens of the Creek Nation who have not heretofore been enrolled by this Commission, and would respectfully request that you notify the Euchees of this appointment, as far as it is possible for you to do so.

Yours truly,

TAMS BIXBY,
Acting Chairman.

(Copy of Letter on Page 459, Book 46.)

MUSKOGEE, INDIAN TERRITORY,
April 12, 1901.

Mr. W. A. Erwin, Lambdin, Oklahoma.

DEAR SIR: The Commission is in receipt of your letter of April 9, 1901, inclosing a newspaper clipping relative to the new roll of Creek citizens. You inquire whether it will be necessary for your wife, Mary Erwin, to again appear before this Commission for enrollment, or whether or not you can appear for her, and state that she selected a preliminary allotment on August 23, 1899.

In reply you are advised that it will not be necessary for your wife, or yourself as her agent, to again appear before the Commission, and that the class of citizens who may be adversely affected by failing to appear for enrollment before the ratification of the Creek Agreement are those who have not heretofore been enrolled by this Commission.

Yours truly,

TAMS BIXBY,
Acting Chairman.

Executive Office, Muskogee Nation.

P. Porter, Principal Chief.

MUSKOGEE, I. T., April 30, 1901.

DEAR SIR: In accordance with the terms of the agreement ratified by Congress March 1st, and to be presented to the Creek Council at the extra session of May 7th, it is provided, "That no person shall be added to the rolls after the ratification of this agreement."

While this was an error of date, and should have been placed at some time thereafter, or at least sufficient time given to enroll all of the Creek citizens, the time which the Creeks were given to ratify the Agreement was ninety days, which will expire on the 29th of May. For this reason the council was postponed to as late a date as possible, giving sufficient time, however, to fairly consider all of the provisions of the agreement prior to the ratification by the Creek Council. The Dawes Commission thought that by putting

an extra force in the field the work of enrolling all Creek citizens could be accomplished by the 7th of May, but in event that some may have not enrolled, that during the meeting of the Council the members of the respective houses of Kings and Warriors representing the several towns of the Creek Nation would all be present, and that the work could be finished by their bringing in all persons that may have been omitted, or who may not have been enrolled, so that at the time of the ratification all persons entitled to allotment by virtue of being Creek citizens would be enrolled.

As the council is now approaching, I deem it proper to write a letter, to respectfully request that each member of the House of Kings and those of the House of Warriors of the respective towns of the Creek Nation cooperate in seeing to it that all persons, Creek citizens, who have not been enrolled, belonging to their respective towns be, through the head of each family, caused to appear at Okmulgee for the purpose of enrolling themselves and families. Where persons are unable by reason of infirmities or sickness from reaching Okmulgee, that properly executed powers of attorney be given to the members of the council by such persons, authorizing them to place their names upon the rolls of Creek citizens, in order that each and every Creek citizen may be enrolled, as this is the only means that will entitle them to their distributive shares of the lands and other property of the Creek Nation. While each and every Creek citizen is and are joint heirs in the estate, should any, by lack of appreciation of the necessity of enrollment, it can not be deemed a wrong to such persons to provide means through which they shall receive their distributive share, and it is the desire of the authorities of the Creek Nation that no Creek citizen shall be, even by reason of his own act, deprived of his proportionate share in the common estate of the Creek people.

Respectfully,

P. PORTER,
Principal Chief

(Copy.)

In the United States Court in the Indian Territory, Northern
District of Muskogee.

Before the Honorable John R. Thomas, Judge of the United
States Courts in Indian Territory.

This day came the Commission to the Five Civilized Tribes, by Tams Bixby, a member of said Commission and its Acting Chairman, and shows to the court that there are a large number of persons who should be enrolled as citizens of the Creek Nation who have not yet presented themselves for enrollment as required by law, and petitions the court to issue an order requiring such persons to appear before said Commission for enrollment at Okmulgee, Indian Territory, between May 7th and May 15th, 1901.

It is therefore ordered by the Court that all recognized citizens of the Creek Nation who have not heretofore presented themselves in person before said Commission for enrollment, be and appear before said Commission for enrollment at Okmulgee, Indian Territory, between May 7th and May 15th, 1901, and that on the failure of any person who should be enrolled as a citizen of said Creek Nation to appear before said Commission for enrollment within the time and at the place stated in this order, after having been duly served with a copy of this order such person or persons be reported to this court to be dealt with according to law.

Done in open court at Muskogee, Indian Territory, this first day of May, 1901.

JOHN R. THOMAS,
Judge.

UNITED STATES OF AMERICA,
Indian Territory,
Northern District, ss:

I, Chas. A. Davidson, clerk of the United States Court for the Northern District, Indian Territory, do hereby certify the above and foregoing to be a true and correct copy of an order of court made on the 1st day of May, 1901.

Witness my hand and the seal of said court at Muskogee, this 1st day of May, A. D. 1901.

[SEAL.]

CHAS. A. DAVIDSON,
Clerk,

By P. M. FORD,
Deputy.

Book 52, p. 251.

Copy.

OKMULGEE, INDIAN TERRITORY, May 20, 1901.

Hon. Leo E. Bennett, United States Marshal, Okmulgee, Indian Territory.

DEAR SIR: I have the honor to advise you that the Commission is in possession of reliable information that Willie and Tom Sullivan, belonging to Quassarte No. 1 Town, and residing seven miles northwest of Eufaula, have refused to appear before the Commission for enrollment.

You are respectfully requested to command these persons to appear before the Commission at Okmulgee on or before May 24th, 1901, in compliance with the order of United States Court.

Very respectfully,
(Signed)

TAMS BIXBY,
Acting Chairman.

Book 52, pp. 356-357.

VINITA, INDIAN TERRITORY, May 21st, 1901.

M. J. Horn, Esq., Badxite, Arkansas.

SIR:

* * * * *

The rules and regulations of the Secretary of the Interior, as well as of the Commission, require that each applicant shall appear in person for the purpose of making an application for enrollment. If the parties to whom you refer desire to apply for enrollment, they can do so by appearing before the Commission at one of its appointments in the Cherokee Nation, a list of which is herewith enclosed, or at the general office of the Commission at Muskogee after the first day of September.

A citizen of the Cherokee Nation cannot transfer his right to allotment to another party.

Very respectfully,

Enc. C. C. N.

Commissioner.

Book 52, pp. 375-76.

VINITA, INDIAN TERRITORY, May 22d, 1901.

Mr. R. F. Allen, Grapevine, Texas.

SIR:

* * * * *

The rules and regulations of the Secretary of the Interior, as well as of the Commission, require that each applicant for enrollment shall appear in person before the Commission.

If, in view of the foregoing citations, you still desire to apply for enrollment, you can do so by appearing before the Commission at one of its appointments in the Cherokee Nation, a list of which is herewith enclosed, or at the general offices at Muskogee after the first day of September, 1901.

Very respectfully,

Commissioner.

Inc. C. C. N.

Book 52, pp. 364-65.

VINITA, INDIAN TERRITORY, May 22d, 1901.

Mrs. J. C. Oats, Clanton, Alabama.

MADAM:

* * * * *

The rules and regulations of the Secretary of the Interior, as well as of the Commission, require that all applicants for enrollment shall appear in person before the Commission.

If, in view of the above citations, you still desire to apply for enrollment, you can do so by appearing before the Commission at one of its appointments in the Cherokee Nation, a list of which is herewith enclosed, or at the general office in Muskogee after the first day of September, 1901.

Very respectfully,

Commissioner.

Enc. C. C. N.

Book 52, p. 380-81.

VINITA, INDIAN TERRITORY, May 22d, 1901.

Mrs. Harriett Full, #418 Indiana St., Lawrence, Kansas.

MADAM:

* * * * *

The rules and regulations of the Secretary of the Interior, as well as of this Commission, require that each applicant for enrollment shall appear in person before the Commission.

If, in view of the foregoing citations, you still desire to apply for enrollment as a citizen of the Cherokee Nation, you can do so by appearing in person before the Commission at one of its appointments in the Cherokee Nation, a list of which is herewith inclosed, or at the general offices at Muskogee, after the first day of September, 1901.

Very respectfully,

Commissioner.

Inc. C. C. N.

(Copy of Letter on p. 355 in Book 56.)

MUSKOGEE, INDIAN TERRITORY, June 21st, 1901.

Mrs. Ruth Davis, Waynesboro, Mississippi.

DEAR MADAM: The Commission is in receipt of your favor of the 5th inst., in which you ask information as to the proper method of procedure to take in establishing your right to take allotment in the Creek Nation. You state that you are a Creek Indian by blood.

In reply to your letter, you are advised that the Commission could not determine your rights to citizenship until you made a personal appearance before the Commission at its office in Muskogee, for the purpose of identification and examination under oath.

In this connection, however, you are advised that the act of Congress of May 31st, 1900, provides:

"Said Commission shall continue to exercise all authority heretofore conferred on it by law. But it shall not receive, consider, or make any record of any application of any person for enrollment as a

member of any tribe in Indian Territory, who has not been a recognized citizen thereof, and duly and lawfully enrolled or admitted as such, and its refusal of such applications shall be final when approved by the Secretary of the Interior.

"Yours truly,

"C. R. BRECKENRIDGE.

"Commissioner in Charge."

Book 59, p. 334.

MUSKOGEE, INDIAN TERRITORY, July 13, 1901.

James Ellis, Osa, Barry Co., Mo.

DEAR MADAM: The Commission is in receipt of your favor which you inquire whether or not you have a landed in the Creek Nation. You also state that your grandfather was a full blood Creek Indian.

In reply to your letter, you are advised that the Commission cannot determine the rights of applicants to citizenship until the applicant appears in person before the Commission for the purpose of identification, and examination under oath.

In this connection, you are advised that the act of Congress approved May 31, 1901, contains the following provision:

"That said Commission shall continue to exercise all authority heretofore conferred on it by law. But it shall not receive, consider or make any record of any application of any person for enrollment as a member of any tribe in Indian Territory who has not been a recognized citizen thereof, and duly and lawfully enrolled or admitted as such."

Your letter from the U. S. Indian Agent is herewith received.

Yours truly,

Commissioner in Charge.

Book 59, p. 355.

MUSKOGEE, INDIAN TERRITORY, July 13, 1901.

Mrs. Co-se-na Johnson, Bristow, Ind. Terr.

DEAR MADAM: The Commission is in receipt of your favor of the 1st ult., inquiring if you can file for your daughter, Lone Tiger, now deceased.

In reply to your letter, you are advised that upon application of a near relative or duly appointed administrator, land will be reserved for the heirs of a deceased person whose death may be established in accordance with the Creek Agreement ratified by the Creek Council May 25, 1901, but said land will not be allotted until the Commission has determined the proceedings relative thereto.

Yours truly,

(Signed)

T. B. NEEDLES,
Commissioner in Charge.

Book 1, p. 429.

MUSKOGEE, INDIAN TERRITORY, November 12, 1901.

The Honorable the Secretary of the Interior.

SIR: I have the honor to submit the following report of work done under the direction of the Commission to the Five Civilized Tribes during the month of October:

* * * * *

CREEK ENROLLMENT DIVISION.

During the month of October there were heard the applications of twenty-three persons for enrollment as citizens of the Creek Nation. These applications are still pending. Citizenship certificates were issued to 443 persons desiring to make applications for allotments of land. During the month of October the field party which had been sent into the Creek Nation for securing additional data as indicated in the Commission's report for the month of September, has made very satisfactory progress.

CREEK ALLOTMENT DIVISION.

Applications were made during the month of October for preliminary allotments and of this number 373 received ion certificates. Fifty-five certificates were issued to the of deceased persons.

* * * * *

Respectfully submitted,

TAMS BIXBY,
Acting Chairman.

Book 787, pp. 256 and 271.

MUSKOGEE, INDIAN TERRITORY, November 24, 1906.
The Select Committee of the Indian Committee of the United States Senate.

* * * * *

GENTLEMEN:

The action of the Commission in 1898 and 1899, in requiring applicants for enrollment to appear personally before it and submit their claims was taken pursuant to a resolution of the Commission which procedure was subsequently approved by the Department in a letter from the Commissioner of Indian Affairs to the Commission to the Civilized Tribes dated July 25, 1899, and approved by the Acting Secretary of the Interior on August 8, 1899. In a letter it was provided specifically that the rolls of citizens to be made by the Commission under the Act of June 28, 1898, must be submitted to the Secretary of the Interior for approval; that it therefore became necessary for the Commission to make a record in all cases sufficient to enable the Department to take intelligent action in the premises, especially in those cases where the Decision of the Commission was for or against the right of any person to have his name placed upon the roll is complained of, and that for the purpose of this record the Commission should require each applicant for enrollment to present himself in person before the Commission at one of its appointments within the tribe in which such applicant claims right to enrollment for examination under oath, his statement to be taken down by the

Commission upon which the Commission should determine the right to enrollment, and such record and action of the Commission should be preserved and transmitted with the roll to the Department for its consideration. A copy of said letter is transmitted herewith, marked Exhibit F.

* * * * *

These persons of mixed Indian and negro blood, whose maternal ancestors were negroes, have, with few exceptions, been classed by the tribes as freedmen, and they themselves have made no claim to any other rights than the rights of freedmen, until the possibilities of the opinion of the Department in the Joe and Dillard Perry case were presented to them.

Citizenship attorneys in the Choctaw and Chickasaw Nations have solicited business of this character, and are procuring these claims upon a contingent basis. Before your committee three of these individuals who are so active in pushing the claims of these persons, admitted that they represented over 1200 applicants of this class.

It is well known that in nearly all of these cases the attorneys and agents have an agreement with the applicants, whereby in the event they are enrolled as citizens by blood, the attorney is to get a portion of the allotment, in many cases the whole surplus, which amounts to one-half of the land, or 160 acres of average allottable lands in the Choctaw and Chickasaw Nations. This surplus allotment, at a conservative estimate, is worth \$1,500,000, and it can easily be seen that the glittering prize which appears before the eyes of these individuals is of such magnitude as to cause them to exert every effort to attain their ends, even to engage in malicious attacks upon any one who stands in their way.

It is a fact that the claims of many of these persons are not brought forward by the applicants themselves, but that these petitions have been filed by a small class of individuals acting as attorneys and agents, who are pushing these claims, not in my judgment by reason of any fees which the applicants have paid them for their efforts in their behalf, but by reason of the contingent fees which they see before them in the event that these claims can in some manner be established.

Nearly all this class of persons, who are enrolled as freedmen, voluntarily took their allotments as such, and never

attempted to assert any rights as citizens by blood until within the last year.

I have submitted this matter to your committee fully, for the reason that in my judgment it is one of great importance to the Choctaw and Chickasaw Indians, and that if this large class of negroes, who are possessed of some Indian blood, but who have never been recognized by the Indian Tribes as citizens by blood are now forced upon them as equal citizens, a great injustice to the Choctaw and Chickasaw tribes will result.

Respectfully submitted,

(Signed)

TAMS BIXBY,

Commissioner to the Five Civilized Tribes.

(10 inclosures.)

Book 41, p. 296.

(Telegram.)

Paid Govt.

MUSKOGEE, I. T., March 2, 1901.

Secretary of Interior, Washington, D. C.:

Paragraph twenty-eight Creek Agreement as modified provides that no person whomsoever shall be added to the rolls after the ratification of the treaty. Act of Congress provides that agreement must be ratified within ninety days from approval by President. Exceedingly doubtful if enrollment of Creeks can be completed within time specified. Paragraph twenty-eight also inconsistent with other provisions of agreement. Congress should be asked to amend agreement by joint resolution fixing date for closing rolls September first nineteen one.

BIXBY.

Book No. 55, p. 332.

MUSKOGEE, INDIAN TERRITORY, June 12, 1901.

The Honorable the Secretary of the Interior.

SIR:

* * * * *

CREEKS.

Applications for enrollment as Creek citizens were received at Muskogee up to and including May 4, 1901. On May 6th the Creek enrollment division opened an office for the hearing of applicants at Okmulgee, Indian Territory, at which place the Creek Council convened in special session on the following day. The members of the Council and other Creek officials interested themselves in procuring the appearance of citizens who had not been enrolled, and in many instances reported that members of the tribes were without means of conveyance and unable to reach Okmulgee. To meet such an emergency, the Commission transferred all surplus teams and wagons to Okmulgee, and upon receipt of reports above mentioned, used its own conveyances to bring in and return that class of persons to their homes.

The work of enrollment was continued up to and including May 24, 1901, an act of Council ratifying the Creek Agreement having been signed by the Principal Chief on May 25th. During the month there were enrolled 2540 citizens by blood and 106 Creek Freedmen, a total of 2646 persons. Of this latter number were 124 persons whose applications had been previously made and whose cases had been awaiting further investigation and decision of the Commission as to their citizenship.

The Commission believes that but with few exceptions all persons whose names are found on the last authenticated Creek rolls, and are bona fide citizens of the Nation, have been registered.

The Creek Agreement provides that—

"All citizens who were living on the first day of April, 1899, entitled to be enrolled under Section 21 of the Act of Congress approved June 28, 1898, entitled 'an act for the protection of the people of the Indian Territory, and for other purposes,' shall be placed upon the rolls to be made by said Commission under said Act of Congress."

A large portion of the citizens were enrolled by the Commission prior to April 1st, 1899, and it will now be necessary to obtain information sufficient to determine whether or not they were living on said date.

On May 1st, the Commission applied to the United States Court for a general order requiring that Creek citizens who had not appeared before the Commission for enrollment to

present themselves at Okmulgee, Indian Territory, between May 7th and May 15th. This order was granted by Hon. John R. Thomas. A copy thereof was submitted with the Commission's report for the month of April. This action was taken under Section 21 of the Act of Congress of June 28, 1898. The work of the Commission was facilitated to some extent by the assistance thus received from the Court.

* * * * *

Respectfully submitted,

_____,
Acting Chairman.

Through the Commissioner of Indian Affairs.

Book No. 10, p. 382.

MUSKOGEE, INDIAN TERRITORY, December 8, 1902.

The Honorable the Secretary of the Interior.

SIR: The Commission respectfully invites the attention of the Department to section nine of the Act of Congress approved March 1, 1901 (31 Stats., 861), known as the Creek Agreement, which is as follows:

"When allotment of one hundred and sixty acres has been made to each citizen, the residue of lands, not herein reserved or otherwise disposed of, and all the funds arising under this agreement shall be used for the purpose of equalizing allotments, and if the same be insufficient therefor, the deficiency shall be supplied out of any other funds of the tribe, so that the allotments of all citizens may be made equal in value, as nearly as may be, in manner herein provided."

Allotments have been made to practically all Creek citizens whose names appear upon the schedules, or partial rolls, heretofore approved by the Department. It has been expected that the last schedules of Creek citizens would have been submitted to the Department, and allotments made to the persons whose names will appear thereon, shortly after January 1, 1903. The Commission intended to then proceed with the allotment of lands for equalization purposes under the provisions of said section nine, above quoted, believing that provision had been made for closing the Creek rolls by the first paragraph of section twenty-eight of said act, which is as follows:

8r

"No persons, except as herein provided, shall be added to the rolls of citizenship of said tribe after the date of this agreement, and no person whomsoever shall be added to said rolls after the ratification of this agreement."

Its belief that provision had been made for closing the Creek rolls was based on the Commission's construction of said paragraph, which, briefly stated, is as follows:

That the term "rolls of citizenship of said tribe" has reference to the rolls of citizens being made by this Commission as provided by section 21 of the act of Congress approved June 28, 1898 (30 Stats., 495), the opening statement of which is: "That in making rolls of citizenship of the several tribes, as required by law, the Commission to the Five Civilized Tribes is authorized and directed," etc.

That by the provision, "no person whomsoever shall be added to said rolls after the ratification of this agreement" it was intended to preclude from enrollment every person, regardless of his former status, who had not presented himself, in person or by proxy, before the Commission and made application for such enrollment prior to said ratification, with no other notice than the passage of said act by Congress and as effectually as recognized citizens of the tribe, who were not residents of the Territory at the time, were excluded from enrollment by the provisions of the act of Congress, approved June 28, 1898, *supra*. In this connection it may be stated that section twenty-nine of said act provides for the enrollment of full-blood Creeks and of non-resident citizens upon certain conditions was construed as a proviso to the paragraph under consideration.

That by the provision "No person, except as herein provided, shall be added to the rolls of citizenship of said tribe after the date of this agreement," the classes of persons mentioned in the two following paragraphs, viz., "All citizens who were living on the first day of April, eighteen hundred and ninety-nine, entitled to be enrolled under section twenty-one of the act of Congress approved June twenty-eight, eighteen hundred and ninety-eight" and "All children born to citizens so entitled to enrollment, up to and including the first day of July, nineteen hundred, and then living," were notified that application for their enrollment must be made,

in person or by proxy, before the date of the ratification of the agreement.

On October 3, 1902, the Commission denied the application of Martha Smith and her three children for enrollment as citizens of the Creek Nation on the ground that said application had not been made prior to May 25, 1901. Under date of November 6, 1902 (I. T. D. 6425-1902), the Department held that the provisions in the agreement of 1901, now under consideration, did not prevent the enrollment of said parties and set aside the decision of the Commission. Martha Smith was admitted by the Commission under the act of June 10, 1896 (29 Stat., 321), and she is a descendant of a person whose name appears on the roll of Creek freedmen made by J. W. Dunn, but her name is not found on the authenticated Creek rolls of 1890 and 1895 and her children were born subsequent to her said admission.

The Commission on November 11, 1902, transmitted to the Department the record in the matter of the application of George Ard for enrollment as a citizen of the Creek Nation, together with the decision of the Commission, of the same date, denying said application for the reason that Ard "had not made application to, and had not been listed by, this Commission for enrollment as a citizen of the Creek Nation prior to May 25, 1901."

The Ard case is still pending before the Department and, while it is dissimilar to the Smith case in that his right to enrollment is based entirely on the fact that his name is found on the 1890 and 1895 rolls and the names of the applicants in the Smith case were not so found, the same law was applied to both cases by the Commission. It is with reference to its probable action in the Ard case that the Commission respectfully requests the Department to consider the provisions of section nine of the act of March 1, 1901, first above quoted, and the desire of the Commission to proceed thereunder, as soon as possible, to allot the residue of lands for equalization purposes.

The Commission further respectfully requests in the event that the decision of the Department in the Ard case should follow the departmental decision in the Smith case, above referred to, that the Commission be instructed definitely as to whether it should proceed without unnecessary delay to allot the residue of lands as provided in said section nine, or suspend all operations under said section so long as applications

for enrollment, involving claims to allotments, in the Creek Nation, are being made to the Commission.

Respectfully,

(Signed)

_____,
Acting Chairman.
 T. B. NEEDLES,
Commissioner.
 _____,
Commissioner.

Through the Commissioner of Indian Affairs.

(Copy.)

Be it Resolved by the National Council of the Muskogee Nation, That a special joint committee to be composed of six members from the House of Kings and twelve members from the House of Warriors be appointed to take charge of the Census rolls of the various Towns and carefully examine the same, and ascertain whether or not they are correct and if any of them are found to contain the names of non-citizens, all such names shall be expunged from the rolls and reported separately to the National Council. All the acts of the Special Committee herein provided for shall be subject to the approval of the National Council.

Adopted.

T. J. ADAMS,
Sp. Pro Tem. H. of W.

A. P. McK.,
Choka hega.

(Endorsed on Back:)

Concurred in.

THOS. W. PERRYMAN,
Pres. H. of K.

LYNCH, *Clk.*

Approved May 15th, 1895.

L. C. PERRYMAN,
Prin. Chief M. N.

Sub. No. —.

Resolution that a committee—6 from the House of Kings and 12 from the House of Warriors, be appointed to take charge of the census reports of the different towns, etc.

Approved May 15, 1895.

(Copy.)

Whereas the opinion prevails throughout the country that a large number of non-citizens have been enrolled as citizens on the different census rolls that have been made from time to time in the past; and

Whereas it is currently asserted and believed by many that a large number of claimants who have heretofore appeared before the Committees of the National Council on citizenship and other authorities of the nation, and established or obtained recognition of their claim to citizenship in the nation, accomplished the same by the undue use of money and other fraudulent means, and

Whereas all former actions involving the question of the citizenship of any person in the Muscogee nation, this nation had no representative to appear as attorney to defend her interest in that behalf therefore,

Be it enacted by the National Council of the Muscogee Nation in extraordinary session assembled. That a commission to be styled The Citizenship Commission to be composed of five (5) of the most competent citizens of this nation be and is hereby created, whose duty shall be to sit as a high court and try, determine and settle all and only such causes as shall involve the question of the right of citizenship of any person in the Muscogee Nation that shall be presented to it either by the claimant or the duly authorized representative of the nation, as hereinafter provided:

The members of the commission shall be *nominated by the Principal Chief and confirmed* by the present session of the council and shall meet as soon as practicable after their appointment and organize by electing one of their number president, and employing one competent interpreter and three (3) well qualified clerks. One clerk shall take charge of all census rolls submitted to the Commission, read and compare them with whatever other collateral matter shall be presented for that purpose and shall keep a list of all such matters and documents and stand responsible for their due preservation. One of the clerks shall preserve a docket and number of all cases and carefully and correctly record all such testimony of witnesses as the Commission shall deem worthy of record. The third clerk shall carefully, correctly and in due form record all findings of facts and decisions of the commission: issue all subpoenas, summons and calls for persons and papers ordered by it. When organized as pro-

vided, the commission shall give public notice through all the newspapers published in the nation of the time and place of its meeting at least thirty (30) days previous to such meeting. Its sessions shall be held in the Council house at Okmulgee, the first of which shall be on the second Tuesday of July, 1895. They may adjourn and meet from time to time as the interests of their business may seem to warrant, and the presence of a majority shall be sufficient for the lawful transaction of business. They shall have full authority to summon witnesses and call for persons and papers and do all other things necessary and proper to show all the facts in any case that may come before it, and in summoning witnesses the process shall be by notifying the judges of the several districts when he shall in turn subpoena the witnesses desired through their Light horsemen. All witnesses subpoenaed on part of the nation shall be paid by the nation the same *per diem* and mileage as paid to witnesses appearing before the district courts in criminal cases; and the commission shall issue certificates of indebtedness attested by the signature of the president and the recording clerk, and the national council shall at its next regular session make appropriation to cover such witness fees.

Be it further enacted. That all persons who shall appear before the commission claiming citizenship in the Muskogee Nation, and all others whose names now appear as citizens on any of the census rolls taken at any time, or on any of the public records of the nation, the validity of whose citizenship shall in good faith be questioned by any responsible citizen, shall be plaintiffs, and entitled to the right of counsel and all other rights usual and incident to the trial of a cause in a court of justice in this nation. They shall file written allegations before the commission setting forth clearly the grounds of their claim and the names of the witnesses they desire to have subpoenaed in their behalf, and shall file a bond satisfactory to the president of the commission that they will themselves pay their witnesses the same *per diem* and mileage as paid to witnesses on part of the nation. And when such allegations and witness bond are properly filed, then the commission shall subpoena the witnesses for the claimants in the same manner as witnesses for the nation are subpoenaed; and if any witness being a Muskogee citizen shall refuse to obey any subpoena of the Commission or to appear before it when duly summoned, except in case of sick-

ness or other unavoidable hindrance, he shall be fined twenty-five (\$25.00) dollars, and no property except improvements, house furniture and wearing apparel shall be exempt from seizure and forced sale to satisfy said fine. The president of the commission shall have authority to administer oath, and any witness testifying falsely under oath shall be subject to the same pains and penalties prescribed by Muscogee law for the crime of perjury; and when the attorney for the nation shall become satisfied that any citizen has sworn falsely in any cause before the commission he shall promptly report the same to the district attorney of *the district in which the accused lives*, together with such facts as he may have to justify criminal proceedings and the district attorney shall without unnecessary delay proceed to arraign and try the accused in the court of his district for the crime of perjury.

Be it further enacted, That, in the examination and adjudication of the claims of negroes to citizenship in the Muscogee nation, the provisions of the treaty of 1866 with the United States shall govern; and the subsequent acts of adoption passed by the National Council shall govern; and in cases of claim to citizenship by reason of Indian blood the act of the National Council as appears in sections 295 and 298, inclusive, of the Muscogee laws, edition 1893, shall govern, and when any case shall be decided in favor of any person by the Commission, the plaintiff shall ever afterwards be a full citizen, and accorded all the rights of any other citizen. And in any enumeration hereafter to be made of the citizens of the nation any person applying for registration, against whose citizenship any question may arise, shall be required to trace his or her origin to the rolls of the names of citizens to be prepared under this act.

Be it further enacted, That the Principal Chief shall nominate with the five commissioners herein provided for, one competent attorney who shall be well versed in the treaties, compacts and laws of the Muscogee Nation, who shall be confirmed by the Council. His duty shall be to defend the nation in all cases of claims to citizenship therein which may be filed before the Commission, to the end that no fraudulent claims may be passed by said tribunal. He shall diligently inquire into all cases of suspected fraud in the enrollment of citizens at any time; and if he shall have cause to believe that any person whose name appears on any census

roll of alleged citizens of the nation, or that any person has heretofore proved his or her rights through fraudulent means, he shall give them due notice and shall move that their names be stricken from the rolls until they shall re-establish their rights through competent testimony to the satisfaction of the Commission. All causes before this tribunal shall be decided by vote, and a majority vote shall stand and be the final decision of that body. All points of law contested before the Commission shall be decided in like manner and have the same force and effect as if decided by any other competent court.

Be it further enacted, That, each Commissioner, interpreter, clerk and the attorney for the nation, shall receive a *per diem* of four (\$4) dollars during the time they are engaged in the business herein prescribed, together with mileage at the rate of 10¢ per mile in going to and returning from their sessions.

Be it enacted further, That two thousand and five hundred (\$2,500) dollars or so much thereof as may be necessary, be and is hereby appropriated for the payment of *per diem* and mileage of members, interpreter and clerks of the Commission to be issued in warrants by the Principal Chief upon certificates issued by the president of the Commission.

Adopted after amending so as to insert the words Okmulgee District instead of "the district in which the accused lives," further amended by striking out the words "nominated by the Principal Chief and confirmed" and inserting instead the word elected.

THOS. W. PERRYMAN,
Pres. H. of K.

J. H. LYNCH, *Cl'k.*

Concurred in after amending so as to reduce the number of clerks from three or two.

E. B. CHILDERS,
Sp. H. of W.

A. P. McK., *Cl'k.*

Amendment concurred in.
J. H. LYNCH, *Clerk.*

THOS. W. PERRYMAN,
Pres. H. of K.

Approved May 30, 1895.

L. C. PERRYMAN,

Prin. Chief M. N.

Read and referred to House of Kings.

E. B. CHILDERS,

Sp. H. of W.

A. P. McK., *Cl'k.*

Whereas, there was a citizenship commission created by an extra session of the National Council of the year of 1895 to try and adjudicate claims for citizenship in the Muskogee Nation, and

Whereas, the Council creating said commission also passed laws by which the commission should be governed, viz. sections 295-296-297-298, inclusive found in Law book, edition 1893, and

Whereas, said citizenship commission has acted contrary to above sections of law and also the law creating the commission which provides that the acts of the commission shall be final, and

Whereas, the following named families: W. E. Throckmorton and family, Ether Durant and family, Dr. Turvin and family, Thompson Rowley and family were tried and rejected by the commission in 1895, and

Whereas, in August, 1896, the citizenship commission reconsidered the above cases and admitted them contrary to the law making the former action final and in violation of the above-named sections, and

Whereas, W. B. Self and family were admitted to full citizenship by said citizenship commission in violation of sections 85 and 86 of pages 38 and 39 edition of 1893, and

Whereas, the evidence of W. B. Self, has, since his admission to citizenship, been the cause of a great many others being admitted—

Therefore—

Be it enacted by the National Council of the Muskogee Nation, That there be and is hereby created a committee of five, three from the House of Warriors and two from the

House of Kings, to investigate and adjudicate the charges set forth in this bill.

Adopted.

G. A. ALEXANDER,
Prest. H. of K.

J. H. LYNCH, *Clerk.*

Concurred in.

T. W. PERRYMAN,
Sp. H. of W. pro tem.

A. P. McK., *Clerk.*

Nov. 6, 1896.

Book No. 1, pp. 12-13-14.

MUSKOGEE, INDIAN TERRITORY,
January 30, 1901.

Hon. H. L. Dawes, Pittsfield, Massachusetts.

MY DEAR MR. DAWES:

* * * * *

I am not quite sure about General Porter's attitude. It appears from some of the newspaper reports which are coming to the Territory, that he proposes to inject some provisions in the treaty which will be exceedingly vicious. He has had offered an amendment which provides that the rolls of citizenship of the Creek Nation after being prepared by the Dawes Commission, must be submitted to the Creek council for revision, before going to the Secretary of the Interior. This would open up the question of citizenship anew and give the tricksters and Creek council an opportunity to inaugurate another carnival of corruption. It may be that General Porter is misquoted. At any rate, I hope the Commission will not be led astray and make this change, which will nullify the work of the Commission which has cost the Government many thousands of dollars.

* * * * *

Sincerely yours,
(Signed)

TAMS BIXBY.

(Copy.)

Executive Office,

Muskogee Nation,

P. Porter, Principal Chief.

November 27, 1901.

Honorable House of Kings & Warriors.

GENTLEMEN: I herewith transmit you a communication from A. P. McKellop and H. C. Reed, Representatives of Creek Nation before the Dawes Commission, accompanied by resolution.

The resolution is self-explanatory, and I think deserves your favorable consideration, as it will be in the direction of protecting the interests of the Creek Nation against the participation in our lands of persons who are not really entitled to citizenship.

Very respectfully,
(Signed)

P. PORTER,
Principal Chief.

Read and referred to H. of Warriors 11/27/1901.

T. W. PERRYMAN,
Pres. H. of Kings.

LEE McNEVINS, *Clerk.*

OKMULGEE, IND. TER., November 27, 1901.

Hon. P. Porter, Principal Chief, Muskogee Nation.

DEAR SIR: We submit herewith a resolution requesting that the Creek roll be withheld from final approval until the nation can submit evidence that a large number of names are enrolled on said roll of those who were never legally admitted or adopted to citizenship in this nation. We understand that rolls will soon be ready for transmittal to the Secretary of the Interior and if any action is to be taken for the protection of the interests of the nation by the correction of said rolls it should be done without delay. The accompanying resolution is intended to delay the final approval of the rolls, which if approved at once will result in great loss to the Creek people.

We respectfully request that the resolution be submitted to the National Council with such remarks thereon as you may deem proper in the matter.

Very respectfully,

(Signed)

"

A. P. McKELLOP,
H. C. REED.

(Copy.)

Be it Resolved by the National Council of the Muskogee Nation, That whereas the Commission to the Five Civilized Tribes, known as the Dawes Commission, is now engaged in completing the roll of citizens of the Creek Nation preparatory to submitting them to the Honorable Secretary of the Interior for final approval; and,

Whereas, the records of said Commission show that there are now upon the cards of said Commission, to be enrolled as citizens of the Creek Nation, the names of eight hundred and forty-three freedmen, or free colored persons, who were never adopted by the National Council of the Muskogee Nation, and whose names, or the names of their ancestors, do not appear upon the Dunn roll, which roll was confirmed by act of Congress of June 28, 1898, known as the Curtis act, and which was also confirmed by the late agreement, ratified by the National Council on May 25, 1901; and,

Whereas, there are a number of names enrolled of persons who claim to be Creek citizens by blood who have never been legally adopted by the National Council, and

Whereas, the Dawes Commission noted the fact of such enrollment in their report to the Honorable Secretary of the Interior for the fiscal year ending June 30, 1899, in which appears on page 13 of said report the following words: "Many of those now claiming have been recognized by the tribe as citizens and been enrolled one or more times on tribal rolls, without having been admitted by act of Council or otherwise legally acquiring such enrollment. That a monetary consideration has been the medium by which both freedmen and others have in some instances gained admission to the tribal rolls cannot be questioned;" and,

Whereas, if the opinion held by the Dawes Commission, that the fact that any person was enrolled and participated in any per capita payment made of such person a citizen, al-

ugh there had not been any previous act of adoption by Council, over one thousand persons will be allotted lands, and will participate in the distribution of other properties of the Creek people who were never lawfully admitted or accepted as members of the Creek Tribe.

Therefore, realizing the great interests involved, amounting to over one million dollars in land and money, the National Council of the Muskogee Nation, in regular session assembled, would respectfully request the Honorable Dawes Commission to withhold the sending of the rolls containing the names of such persons to the Honorable Secretary of the Interior until said Nation, through its recognized attorneys, can fully present evidence to said Commission showing said persons not entitled to enrollment, and would respectfully request the Honorable the Secretary of the Interior to instruct said Commission to permit said nation to, within ninety days after the approval of this resolution, make proof at said parties so noted upon a separate roll by the Honorable Dawes Commission, as not having been found upon the Dunn roll, or as not being descended from any person whose name is found upon the Dunn roll are not entitled to citizenship and others claiming citizenship by blood whose rights are questioned by the recognized attorneys of the Muskogee Nation, and to establish to the satisfaction of said Commission, that whatever enrollment of said names was had, was obtained by fraud, and without authority of law, in order that said Commission may intelligently pass upon the rights of said persons to citizenship in the Creek Nation.

Be it further resolved, That the Principal Chief shall request of the Dawes Commission a list of the names of said eight hundred and forty-three persons, so about to be enrolled by the Dawes Commission, and others claiming citizenship by blood whose rights are questioned by the recognized attorneys of the Muskogee Nation, in order that a formal protest may be filed against the said enrollment, and that proof may be submitted in support of the contention of the Muskogee Nation therein.

Be it further resolved, That the Principal Chief is hereby directed to send a certified copy of this resolution to the Honorable Secretary of the Interior, and also a copy to the Dawes Commission.

Adopted November 30, 1901.

(Signed)

AMOS McINTOSH,
Speaker, House of Warriors.

(Signed) A. P. McKELLOP, *Clerk.*

Concurred in November 30, 1901.

(Signed)

T. W. PERRYMAN,
President House of Kings.

LEE McNEVINS, *Clerk.*

Approved December 2, 1901.

(Signed)

P. PORTER,
Principal Chief, Muskogee Nation.

(Copy of Telegram to Secretary on p. 196, in Book 7.)

Paid Gov't.

MUSKOGEE, I. T., July 11, 1902.

Secretary of Interior, Washington, D. C.

Indications point to employment of corrupt influences on part of interested persons to prevent ratification of Creek agreement. Impression prevails that direct bribery has been indulged in in connection with tribal legislation for years. Commission believes no effort should be spared to bring about proper prosecution of such offences and frustrate the movement on this occasion by immediate precautionary measures. We recommend the immediate detail of secret service officers, or, if impracticable, authority to employ suitable agents. Necessity is urgent. Special session council called July seventeenth.

BIXBY,
NEEDLES,
BRECKINRIDGE,
Commissioners.

O. B. G. R.

(Copy of Departmental Letter on p. 17, in Book 14.)

MUSKOGEE, INDIAN TERRITORY, June 25, 1903.

The Honorable the Secretary of the Interior.

SIR: We inclose copy of a telegram of the 20th inst. from Washington to the Globe-Democrat of St. Louis, and pub-

ished in the issue of the 21st inst. of that paper, alleging, upon the authority of Mr. Pliny Soper, U. S. District Attorney for the Northern Judicial District of Indian Territory, extensive frauds "with the allotment of lands to the Indians and with the enrollment of the tribesmen in preparation for the final dissolution of the tribal relations." The telegram is headed "Alleged Frauds in Indian Territory Land Allotments," startling "disclosures" are said to be expected as a result of investigation, Federal officials are said to be involved in a "scandal," and the entire purport of the dispatch is to the effect that conditions of this character exist in Indian Territory, in which Territory the enrollment of the Indians and the allotment of their lands are exclusively under the jurisdiction of this Commission, subject to the general authority of the Secretary of the Interior.

Mr. Soper is one of the officials upon whom this Commission is dependent, under the law, for the prosecution of persons charged with illegal practices. Statements of this character from him are entitled to great weight with the Department and the public, the confidence of both of which it is highly important for the Commission to possess.

In view of the foregoing we request that you communicate the inclosed telegram to Mr. Soper, and ask if he made or authorized any statement therein contained reflecting upon the integrity of the work of this Commission.

Very respectfully,

TAMS BIXBY,

Chairman;

C. R. BRECKINRIDGE,

W. E. STANLEY,

Commissioners.

*Excerpt from First Annual Message, Second Term, P. Porter,
Prin. Chief, Annual Session, October 4, 1904.*

To the Honorable Members of House of Kings and Warriors.

GENTLEMEN:—

* * * * *

CITIZENSHIP.

Attention has been called to the fact that quite a number of people have been enrolled as Creek citizens and entitled

to allotments who, if their cases were fully investigated, would be found to be neither Creek citizens by blood or adoption. Quite a number of these were passed upon when the court had jurisdiction over the determination of citizenship matters. The Creek Nation did not make an appearance in many cases and they were adjudged to be citizens upon the evidence presented by them. Thereafter all these cases were affirmed by agreement. In other cases claimants procured false evidence and were enrolled and allotments made for them who died prior to April 1, 1899, who would have been entitled to allotments had they been living at that time. Doubtless in some of these cases allotments have been made and deeds delivered to them, but it is neither the desire of the Creek people nor the Government to wrong those entitled to allotments by taking a part of their patrimony and giving it to those who have no right to it. Means should be instituted to investigate all the cases, and for this purpose I would recommend that you, by resolution, petition Congress to have a citizenship court appointed in like manner and with like power as has been appointed for the Choctaw and Chickasaw so that it will enable the Nation to present these cases for full adjudication.

* * * * *

(Book 37, p. 48.)

MUSKOGEE, INDIAN TERRITORY, September 13, 1906.

The Honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge receipt of Departmental letter of August 22, 1906 (I. T. D. 10162-1906), advising that the Department on June 6, 1906, in conformity with my recommendation of June 2, 1906, recommended that an item making an appropriation of \$100,000 be inserted in the Deficiency Appropriation bill, in order to enable this office to carry on the work under my supervision for the fiscal year ending June 30, 1907.

Congress having failed to make such additional appropriation of \$100,000, and prompt action being desired by the Department in the matter, in order that the necessary funds may be provided by Congress at its next session, I am requested to furnish an itemized estimate of the amount necessary to carry on the work under my supervision for the present fiscal year.

June 2, 1906, I had the honor to wire the Department as follows:

"Secretary of the Interior, Washington, D. C.:

"Find upon return to the office that since passage of Curtis Act our business has increased enormously. The work incident to reception and disposition of applications for enrollment of minor children, the great number of motions for rehearing and review now being filed, the marked increase of work in the land offices, the expenses of delivery of deeds, and the necessarily large increase in all divisions incident upon the passage of the Act of April twenty-six, nineteen hundred and six, convinces me that item of two hundred thousand dollars in Indian Appropriation bill will be insufficient for work under my supervision for next fiscal year. It is urgently recommended that Congress be requested to make provisions in the Deficiency bill for an additional appropriation of one hundred thousand dollars for this office for fiscal year ending June thirtieth, nineteen hundred and seven.

BIXBY,
Commissioner."

The Act of Congress approved June 21, 1906 (Public No. 258), entitled:

"An act making appropriations for the current and contingent expenses of the Indian Department for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven.

provided in reference to the work under my supervision and direction as follows:

For the completion of the work heretofore required by law to be done by the Commission to the Five Civilized Tribes, two hundred thousand dollars. Said appropriation to be disbursed under the direction of the Secretary of the Interior."

I have the honor to report that the expenses for the first quarter of the fiscal year ending June 30, 1907, will amount to about sixty-five thousand dollars.

With the present number of employees and the incidental and miscellaneous expenses, it will require from sixty-five to seventy thousand dollars a quarter to carry on the work under my supervision and direction during the present fiscal year. I do not see that any decrease can be made during the year in the number of employees of any of the divisions, and in certain branches of the work, I believe that it would be advantageous to increase the force so that all matters that could possibly receive consideration be disposed of during the present fiscal year.

In the Creek Nation I have no doubt that investigation will be required in large number of cases of persons now enrolled, and who have received allotments, but where the office has been apprised of an attempted fraud in securing such allotments.

The data secured by a field party in the Choctaw Nation has also resulted in the securing of considerable testimony showing a number of fraudulent allotments in the Choctaw and Chickasaw Nations, and it is probable that a considerable number of such frauds were also attempted in the Cherokee Nation. In my opinion all these cases should be investigated before the work under my supervision and direction is completed, and I can see no better time for these investigations than during the present fiscal year, and before the completion of the delivery of deeds and patents to the citizens of the Five Civilized Tribes.

No patents have been prepared to the present time to allottees of the Seminole Nation or Mississippi Choctaws and as soon as the forms of conveyance are approved, I anticipate the preparation, checking and delivering of patents to citizens of the Seminole Nation, and to Mississippi Choctaws.

The act of Congress approved April 26, 1903 (Public Law 129), provides:

"That the rolls of the tribes affected by this act shall be fully completed on or before the fourth day of March, nineteen hundred and seven, and the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person after said date.

If this provision of law is to be made effective, a considerable increase in the legal and clerical force of all the enrollment divisions must be made at an early date, in order that the consideration and disposition of pending applications shall be completed prior to March fourth, nineteen hundred and seven.

I, therefore, have the honor to recommend the appropriation of an additional sum of Seventy-five thousand dollars, to supply deficiencies in the appropriation made for the work under my supervision and direction for the fiscal year ending June 30, 1907.

Proposed item for insertion in an act entitled,

"An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1907, and for prior years, and for other purposes.

To supply a deficiency in the appropriation for the completion of the work heretofore required by law to be done by the Commission to the Five Civilized Tribes and its successors, the Commissioner to the Five Civilized Tribes, including all objects mentioned under this title of appropriations as provided in the act of Congress approved March 3, 1905 (33 Stats., 1060), and June 21, 1906 (Public No. 258), making appropriations for the current and contingent expenses of the Indian Department for the fiscal year ending June 30, 1906, and June 30, 1907, being the amount absolutely required to complete the unfinished work devolving upon the Commissioner to the Five Civilized Tribes for the fiscal year ending June 30, 1907, Seventy-five thousand dollars; said appropriation to be disbursed under the direction of the Secretary of the Interior."

October 4, 1905, I had the honor to submit for the consideration of the Department a detailed estimate of appropriation required for the work under my supervision and direction for the fiscal year ending June 30, 1907, of \$201,600. Since the submission of this estimate considerable additional work has been entrusted to the Commissioner to the Five Civilized Tribes by the provisions of the Act of Congress approved April 26, 1906 (Public No. 129), and June 21, 1906 (Public No. 258).

It is somewhat difficult to submit an estimate in detail of the distribution of the additional appropriation of seven thousand five hundred dollars as submitted, but as the expenses of this office are now somewhat in excess of the estimate submitted in my letter of October 4, 1905, I am convinced that an additional sum of Seventy-five thousand dollars will be absolutely necessary to carry on the work of this office during the present fiscal year, and that if the additional Seventy-five thousand dollars is not appropriated by Congress, a curtailment in the force of employees will be necessary, which will be detrimental to the early disposition of matters requiring the attention of this office and the Department.

Respectfully,
(Signed)

TAMS BIXBY,
Commissioner.

Through the Commissioner of Indian Affairs.

(Copy of Letter on p. 45, in Book 15.)

Telegram.

(No Date.)

Secretary of Interior, Washington, D. C.:

Widespread and continued newspaper criticism of most serious character, involving integrity of our work and our fidelity to duty, impels us to request that an immediate and searching investigation be instituted and that the President be informed of this desire. A work unparalleled in the history of civilization, the result of years of unremitting toil is threatened by fanatical reports and questionable journalism. We urge that there be assigned to the work of investigation one whose reputation for honesty, ability and fearlessness is well established, and whose findings will be universally accepted.

TAMS BIXBY.
T. B. NEEDLES.

An Act to Provide Payment of Actual Necessary Expenses in Fraudulent Enrollment and the Application for Enrollment.

Whereas, there is a large number who by fraud, false swearing, and the aid and connivance of unscrupulous attorneys, have succeeded in having themselves declared Creek Citizens and thereby obtained allotments of 160 acres of land, and whereas sufficient work has already been done under the last appropriation to demonstrate beyond a reasonable doubt that this state of affairs does actually exist, and names of witnesses have been obtained by whom these frauds can be established, and

Whereas, it is impossible to secure the attendance of witnesses without some provision is made for the paying to them of per diem and mileage, and

Whereas, the urgent necessity for this fund exists and that the Creek Nation may be fully and properly protected from fraudulent enrollments and applications for enrollment; therefore,

Be it enacted by the National Council of the Muskogee Nation, That there be and is hereby appropriated out of the general fund of the Creek Nation, not otherwise appropriated, the sum of Eight Thousand Dollars (\$8,000.00), or so much thereof as may be necessary for the payment of per diem and mileage of witnesses and other actual necessary expenses for the purpose of investigating the fraudulent enrollment and application for enrollment for citizenship in the Muskogee Nation, said sum to be paid out under such rules and regulations as may be prescribed by the Secretary of the Interior for the disbursements of Creek funds.

Be it further enacted, That all expenditures under this act, shall be upon vouchers taken by the National Attorney duly signed by each and every one receiving any part of the same, all vouchers to be deposited with the Principal Chief to the end that a correct and accurate accounting may be had of all expenditures under this act.

Adopted Nov. 2, 1906.

ALEX DAVIS,
Speaker House of Warriors.

MILDRED CHILDERS, *Clerk.*

Concurred in Nov. 2, 1906.

SAM HAYNES,
Pres. House of Kings pro Tem.

SAM GRAYSON, *Clerk.*

Approved Nov. 2, 1906.

P. PORTER,
Prin. Chief.

54696.

F. H. E.

Department of the Interior, Washington.

I. T. D. 6340-1903.

August 25, 1903.

Commission to the Five Civilized Tribes, Muskogee, Indian Territory.

GENTLEMEN: Inclosed herewith you will find a copy of the opinion of the Assistant Attorney General, dated August 20, 1903, approved by the Secretary on the same day, upon your report transmitting deeds issued to John S. Meagher, deceased Creek allottee.

The opinion states that the deeds should be issued to the heirs of decedent, for the reasons set forth therein.

You are directed to act in accordance with the views expressed in said opinion.

Respectfully,

H. W. MILLER,
Acting Secretary.

1 inclosure.

[Endorsed:] Indexed. 54696. No. 24360. Sept. 8, —. 11/4/03 J. G. F. Department, Miller, Washington, D. C., August 25, 1—. Transmits copy of approved opinion of Assistant Attorney General upon report of Sec., transmitting deeds issued to John S. Meagher, deceased Creek.

I. T. D. 5908-1903.

J. R. W.

W. C. P.

Office of Assistant Attorney General for the Interior
Department.

WASHINGTON, August 20, 1903.

The Secretary of the Interior.

Sir: I am in receipt of the reference by the Acting Secretary of the communication of July 27, 1903, of the office of Indian Affairs (Land 45,723, 1903), and its enclosures, respecting the deeds to be issued in case of John S. Meagher, deceased, a Creek Indian, for allotment of lands under the acts of March 1, 1901 (31 Stat., 861, 862-4), and June 30, 1902 (32 Stat., 500-2).

It appears by the communication and enclosures that John S. Meagher, an enrolled citizen of the Creek Nation, died December 12, 1899, having theretofore applied for part of the lands which he was entitled to be allotted, amounting to one hundred and twenty acres, of which he designated one forty acre tract as his homestead. Subsequent to his death his heirs applied for allotment of the other forty acres to which he was entitled. The allotments were certified by the Commission to the Five Civilized Tribes, which prepared three deeds—one to John S. Meagher for the homestead tract, one to him for the eighty acres of allotment land not designated as a homestead, and one to "the heirs of John S. Meagher" for the tract allotted after his death.

June 16, 1903, the Department (I. T. D. 5422-1903), returned the deeds without approval, requesting the commission to submit an explanation why the deeds were issued to different persons and to report upon the advisability of issuing one deed for the one hundred and sixty acres to the heirs of John S. Meagher. July 17, 1903, the Commission made its report giving reasons which in its opinion precluded the conveyance by a single deed. July 27, 1903, such report was transmitted to the Department by the Commissioner of Indian Affairs, expressing the opinion, and reasons therefor, that a single deed embracing all the land might properly issue to the heirs of John S. Meagher as grantees. August 6, 1903, the letter of the Acting Secretary, reciting the facts, referred the matter and enclosures to me—

for an opinion, not only as to the legality of the forms inclosed herewith, but also with the request

that you indicate what should be the proper practice in conveying the allotted lands, where the allottee has died, leaving children "born to him after May 25, 1901."

Paragraph 16 of the supplemental agreement with the Creek Indians ratified by act of June 30, 1902 (32 Stat., 500), contains provisions as to the alienation of allotted lands, as to their liability to be taken to satisfy debts, and as to their taxability, as follows:

"Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the Interior. Each citizen shall select from his allotment forty acres of land, or a quarter of a quarter section, as a homestead, which shall be and remain nontaxable, inalienable, and free from any incumbrance whatever for twenty-one years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead, in which this condition shall appear.

"Selections of homesteads for minors, prisoners, convicts, incompetents and aged and infirm persons, who cannot select for themselves, may be made in the manner provided for the selection of their allotments, and if for any reason such selection be not made for any citizen it shall be the duty of said Commission to make selection for him. The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after May 25, 1901, but if he have no such issue then he may dispose of his homestead by will, free from the limitation herein imposed, and if this be not done the land embraced in his homestead shall descend to his heirs, free from such limitation, according to the laws of descent herein otherwise prescribed. Any agreement or conveyance of any kind or character violative of any of the provisions of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity.

It is thus seen that the limitations of the estate as to exibility, alienation, liability for debts, and the rule of descent are different in respect to the homestead from other allotted lands. The statute requires a separate deed for the homestead. That is, of course, a sufficient and controlling reason for making a separate deed therefor.

As to the other allotted lands no reason appears in the statute for a deed different in form in the case of lands selected by the allottee in his lifetime, not conveyed till after his death, and lands selected in his right by his heirs after his death. In either case the lands descend to the same class of heirs, the general heirs of decedent, and not to particular heirs, and all such lands may, in my opinion, be conveyed by one deed.

The proper practice in conveying allotted lands where the allottee has died prior to conveyance, in my opinion, is to make the deed run to "the heirs of" the allottee naming the decedent. A patent or grant to a deceased person is void at law. *Galloway vs. Findley* (12 Pet., 264, 298); *Davenport vs. Lamb* (13 Wall., 418, 427); *McCracken's Heirs vs. Beall* (3 A. K. Marsh, Ky., 210); *Hunter vs. Watson* (12 Cal., 363, 73 Am. Dec., 543). As to patents by the United States to public lands this rule is changed by the act of May 30, 1836 (5 Stat., 31; sec. 2448 R. S.), but the language of that provision is not broad enough to include the deed of an Indian tribe for allotted lands though such conveyance is made under a law of the United States. In the last above cited case from California it was held that a deed to "K and his heirs" made after K's death was ineffectual to convey title, and that the word heirs was a mere word of limitation and not one of purchase, and had no effect to vest or convey a title.

I am therefore of opinion that where these deeds are to be executed for the benefit of the heirs of deceased allottees they should be executed to "the heirs of," &c., naming the decedent, and should not be issued to, or in the name of, the deceased as the grantee therein.

In case of a homestead the deed should be in the same form, but describe the land as the deceased's homestead. It being described as the homestead, and the deed showing upon its face that it is made pursuant to the statute which is therein referred to, the statute governs and limits the estate conveyed first to heirs of the body, that is, "heirs born

to" the deceased after May 25, 1901. In default of such heirs the deed will have effect and inure to the heirs generally, which it could not do if limited to the particular heirs born since May 25, 1901.

Very respectfully,

F. L. CAMPBELL,
Assistant Attorney-General.

Approved, August 20, 1903.

E. A. HITCHCOCK,
Secretary.

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Copy.

Refer in reply to the following: Land 35195-1904, 35415-1904.

Department of the Interior,

Office of Indian Affairs,

WASHINGTON, June 2, 1904.

The Honorable the Secretary of the Interior.

SIR: There is enclosed herewith a report from the Commission to the Five Civilized Tribes forwarding 484 deeds to the heirs of deceased citizens of the Creek Nation, which they request authority to cancel. Each deed covers an allotment of 160 acres, and the Commission say that under the opinion of the Assistant Attorney General of August 20, 1903, they should be cancelled and separate deeds covering a homestead of 40 acres and an allotment of 120 acres issued in lieu of the single deeds. They recommend that the authority requested be granted.

There is enclosed a report of the Commission dated May 24, 1904, in which they refer to their letter of May 23, and say that none of the deeds transmitted have been delivered to the allottees. The deeds enclosed are as follows:

Roll No.	Deed No.	File No.	Name.
C. 8790	10035	6419	Heirs of Willie Tulsa.
C. 377	21198		Monnie.
C. 6967	21199		Katie Davis.
F. 3464	21403		Ned Williams.
F. 3279	21402		Lonie Tucker.
C. 2470	7871		Eliza Tecumseh.
C. 6141	20774	11975	John Brook.
C. 6459	20775	11976	Betsey Scott.
C. 5330	20318	11965	Hugh Warden.
F. 4232	20319	11966	Isaac Tucker.
C. 6362	20320	11967	Katie Starr.
C. 6625	20321	11968	James Narcome.
C. 6629	20322	11969	Lydia Karlarney.
C. 520	20323	11990	Mary Knight.
C. 801	20324	11971	Wilson McKellop.
C. 825	20325	11972	Eli Tiger.
F. 2651	20327	11974	Ethel May Lyons.
C. 6538	20777	11978	Hettie Gray.
C. 6467	20776	11977	Minnie Lindsey.
C. 5815	16090	8711	Emanuel Bruner.
C. 3786	5848	6356	Fred Adams.
C. 6958	10109	6493	Thomas Adams.
C. 4007	15499	7920	"Annie."
C. 4036	5828	6336	Parnoskey Ahfonoke.
C. 4034	5849	6357	Ahfonoke.
C. 5161	5782	6291	Lewis Alexander.
C. 6002	15510	7931	Nathan Alexander.
C. 7920	15540	7961	Ar-tar-kin-nay.
C. 4173	5835	6343	Olla Aubrey.
C. 5528	16088	8709	Tyler Andreson.
C. 4685	5809	6318	Narto Anderson.
C. 9075	10030	6414	Lottie Anderson.
C. 6522	10153	6537	Alma Anderson.
C. 7886	15534	7955	Charles Anderson.
C. 1343	5780	6289	Judie Barnette.
C. 4594	5813	6322	Eliza Barnett.
C. 7386	15532	7953	Louisiana Barnett.
C. 8750	10019	6403	Timothy W. Barnett.
C. 8406	10166	6550	Louis Barnett.
C. 8000	10270	6654	Winnie Gano.
C. 7474	10069	6453	David Gooden.
C. 9599	10231	6615	Helen Hardridge.
C. 4259	5829	6337	Chemona Harjo.

Roll No.	Deed No.	File No.	Name.
C. 4258	5830	6338	Tulmochus Harjo.
C. 4055	5838	6346	Thaneda Harjo.
C. 2413	5873	6381	Wilyarmy Harjo.
C. 8649	10278	6662	Hulbutta Harjoche.
C. 1700	15492	7914	Willie Land.
C. 3534	5859	6367	Sam Lasley.
C. 8335	10160	6544	Lewis Lasley.
C. 8028	10275	6659	"Laslie."
C. 7736	10191	6575	Mollie Lakey.
C. 4016	5842	6350	John Lewis.
C. 7954	15542	7963	Leider.
C. 7883	10180	6564	Leetcher.
C. 6927	10014	6398	Thomas Little.
C. 7960	15545	7966	Sarah Littlehead.
C. 5837	16091	8712	Clara Belle Baker.
C. 8835	10225	6609	Mary Ann Barnett.
C. 7394	10076	6460	Mannie Bear.
C. 4566	5816	6325	Martha Ben.
C. 3040	5864	6372	Helay Behen.
C. 8613	10027	6411	Sophia Bigpond.
C. 8614	10048	6432	Martha Bigpond.
C. 7520	10021	6405	Lottie Bighead.
C. 7522	10061	6445	Nancy Bighead.
C. 7421	10074	6458	Lucy Birdhead.
C. 7219	10095	6479	Polly Bird.
C. 7735	10192	6576	Wisey Blackgrass.
C. 9035	5820	6382	Jennie P. Boles.
C. 1567	5776	6285	Ural Boone.
C. 9484	15570	7991	Madge Boone.
C. 2160	5771	6280	Charles Eberle Bruner.
C. 2868	5753	6262	James Brown.
C. 2967	5870	6378	Jennie Brown.
C. 5576	16086	8707	Winfield Bruner.
C. 5734	16089	8710	Georgia Bruner.
C. 1387	5778	6287	Nannie Bright.
C. 6269	10106	6490	James Brown.
C. 7187	10039	6423	Lillie Bruner.
C. 7405	10075	6459	Lizzie Bruner.
C. 7188	10097	6481	Jemime Bruner.
C. 8999	10212	6596	Nellie Bruner.
C. 7100	10292	6676	Jackson Bruner.
C. 8569	10000	6384	Nina Brook.
C. 8570	10001	6385	Nina T. Brook.

Roll No.	Deed No.	File No.	Name.
C. 7772	10025	6409	Emma Brooks.
C. 5648	15504	7925	Barney Burgess.
C. 595	5762	6271	Ben Bullet.
C. 681	5765	6274	Sam Butler.
C. 8948	10214	6953	John Butler.
C. 9282	10253	6637	Cleveland Bushyhead.
C. 8856	10223	6607	Sandy (Leader) Byrd.
C. 9258	10242	6626	Jim Goody.
C. 7506	10063	6447	Cinda Green.
C. 6796	10143	6527	Louisiana Green.
C. 2489	5750	6259	Charley Grayson.
C. 166	5784	6293	Sophia Grayson.
C. 8581	10005	6389	Roley Grayson.
C. 7114	10044	6428	Mary Grayson.
C. 7512	10022	6406	Comne Gray.
C. 8428	15550	7971	Susan Grayson.
C. 7511	10295	6679	Dosey Gray.
C. 7302	10103	6487	Silanie Gray.
C. 1231	5774	6283	Annie Kanard.
C. 7217	10291	6675	Tilda Kanard.
C. 9486	15571	7992	Hully Kanard.
C. 7090	16094	8715	Lizzie Kanard.
C. 8393	10028	6412	Barney Kano.
C. 8278	10117	6501	Marker Kano.
C. 8390	10164	6548	John Kano.
C. 4282	5827	6335	Louis Kernal.
C. 3461	5755	6264	Louie Kelly.
C. 8647	10279	6663	Katy Key.
C. 8646	10280	6664	Naggy Key.
C. 8247	10298	6682	George Kenny.
C. 6525	15523	7944	Washington Kanard.
C. 6176	10233	6617	Chotkey King.
C. 6177	10263	6647	Louisa King.
C. 6686	10289	6673	Willie King.
C. 9463	10232	6616	Jasper Knight.
C. 8168	10284	6668	Konahe.
C. 4366	5823	6331	Webiley Maharkey.
C. 6627	10138	6522	John Narcome.
C. 6626	10139	6523	Sunday Narcome.
C. 9270	10245	6629	Havey.
C. 5983	15512	7933	Johnie Nevey.
C. 5982	15513	7934	John Nevey.
C. 6421	10146	6530	Alice Partridge.

Roll No.	Deed No.	File No.	Name.
C. 7482	10294	6678	Minnie Parnosky.
C. 7950	10089	6473	"Petelle."
C. 7158	10041	6425	Ellen Peters.
C. 9017	10031	6415	Louis Perryman.
C. 9429	15568	7989	Georgia R. Perryman.
C. 6344	5779	6288	Dave Pigeon.
C. 2281	5747	8—6	William R. Pitts.
C. 7568	10207	6591	Tobbe Porter
C. 6359	10107	6491	Walter Polk.
C. 6358	10144	6528	Delilah Polk.
C. 7837	10257	6641	Silla Polk.
C. 9236	10237	6621	Jeannetta Proctor.
C. 5700	15505	7926	Peter Randall.
C. 3557	5857	6365	Lucy Reynolds.
C. 6793	10120	6504	Eliza Reynolds.
C. 7204	10096	6480	Leah Reed.
C. 4179	5834	6342	Richmond.
C. 9021	10210	6594	Willie Riley.
C. 6787	10228	6612	Parfna Riley.
C. 8785	15553	7974	Johnson Riley.
C. 9525	15544	7965	Jack Albert Rodgers.
C. 9013	15561	7982	Vina Sampson.
C. 4218	5832	6340	Elsie Sampson.
C. 3544	5867	6375	Bertha Sango.
C. 5849	15516	7937	Miley Sands.
C. 4928	5795	6304	Hully Sand.
C. 3284	5861	6369	Phoebe Sapulpa.
C. 4850	5800	6309	Lucinda Sammy.
C. 8125	10273	6657	Sak-yo-thli-ke.
C. 6906	10126	6510	Sak-ka-senny.
C. 8572	10003	6387	Salmer.
C. 8580	10004	6388	Sarnochka.
C. 6789	10121	6505	Sartolumka.
C. 7697	10024	6408	George Schrimsher.
C. 7041	10081	6465	Lona Scott.
C. 7040	10082	6466	Polly Scott.
C. 6412	10147	6531	Annie Scott.
C. 6411	10148	6532	Kissie Scott.
C. 6410	10149	6533	Sowitee Scott.
C. 6165	10264	6648	Louisa Scott.
C. 5965	15514	7935	Sampson Scott.
C. 6529	19152	6536	Tom Segro.
C. 7255	10099	6483	Angeline Sewell.

Roll No.	Deed No.	File No.	Name.
C. 7254	10100	6484	Frank Sewell.
C. 4337	5824	6632	Sealie.
C. 7784	10187	6571	Selina.
C. 5379	5794	6303	Semarte.
C. 9274	10249	6633	Setehme.
C. 7669	10201	6585	Se-yo-ke.
C. 7931	15539	7960	She qua bee.
C. 6161	10105	6489	Sallie Simmer.
C. 3721	5853	6361	Silpee.
C. 7871	15537	7958	Moses Simmons.
C. 9064	10209	6593	Nicey Sizemore.
C. 7676	10200	6594	Sin-ki-ye.
C. 7523	10060	6444	Aggie Smith.
C. 3299	10119	6503	Barney Smith.
C. 8438	10171	6555	Chatham Smith.
C. 6718	10154	6538	John Smith.
C. 8384	10163	6547	Sarty Smith.
C. 8439	10170	6554	Martin Smith.
C. 8126	10274	6658	Katcha Fixeco.
C. 7456	10293	6677	Sildy Cain.
C. 4939	5791	6300	Rosanna Canard.
C. 3046	5869	6377	Agie Cahkokethlon.
C. 6708	15574	7945	Maggie Cahtahwon.
C. 6878	10053	6437	Susan Cedar.
C. 9494	15574	7995	Thomas Childers.
C. 9235	10236	6620	Daisy Childers.
C. 6334	15518	7939	Lucy Chisholm.
C. 4914	5798	6703	Katie Chupco.
C. 5036	5788	6297	Chamela.
C. 8866	15557	7978	Sam Charles.
C. 8870	15558	7979	David Charles.
C. 8940	10216	6600	Wilburn Chief.
C. 8940	10216	6600	Wilburn Chief.
C. 8380	10159	6543	Cho fo lo che.
C. 8519	10285	6369	Cinda.
C. 9289	10256	6640	Charles Cloud.
C. 9290	10258	6642	Mary Cloud.
C. 6748	10142	6526	William E. Colmon.
C. 7763	10189	6573	John Coffee.
C. 5111	5785	6294	Lizzie Coachman.
C. 3351	5863	6371	Peter Coachman.
C. 9284	10255	6339	Nellie Colbert.
C. 9502	15575	7996	Ludie Cox.

Roll No.	Deed No.	File No.	Name.
C. 5620	15503	7924	Willie Colbert.
C. 9431	15569	7990	Linda Colbert.
C. 1620	5775	6284	Birl Combs.
C. 7786	10184	6563	Lucy Conner.
C. 7785	10186	6570	Adam Conner.
C. 4416	5821	6329	Norma Collins.
C. 8796	10034	6418	Sunday Collins.
C. 4833	5802	6311	Liza Coney.
C. 7986	15548	7969	Nessie Coonhead.
C. 7513	10062	6446	Lader Coon.
C. 8280	10118	6502	Lumsey Coon.
C. 4865	5817	6326	Nelissey Cornells.
C. 5457	5826	6334	Annie Cornell.
C. 8777	10018	6402	Co-nah-ke.
C. 9269	10244	6628	Imly.
C. 7574	10206	6590	Topley Is pocogee.
C. 6783	10122	6506	Jennie Jacobs.
C. 6782	15526	7947	Stephen Jacobs.
C. 6951	10051	6435	Lucy Jackson.
C. 6952	10110	6494	Ceaser Jackson.
C. 6953	15530	7951	Wiley Jackson.
C. 4587	5815	6324	Hully Jacob.
C. 6905	10127	6511	Jennie Jack.
C. 6904	10058	6442	Sam Jack.
C. 7126	10042	6426	Jackey.
C. 4294	10179	6563	Nathan Noon.
C. 9078	10029	6413	Jackson Jack.
C. 8516	5862	6370	Prince Jefferson.
C. 7276	10098	6482	Timmie Jessee.
C. 4224	5831	6339	Adam Johnson.
C. 9279	10038	6422	Susie Johnson.
C. 8220	10169	6553	Soney Jones.
C. 9252	10240	6624	Lucy Sullivan.
C. 425	5763	6272	Togy Sugar.
C. 8404	10165	6549	Phillip Stand.
C. 5367	5790	6299	Wilson Standwaitie.
C. 2214	17336	9216	Frank Evans.
C. 7001	10083	6467	Billy Euchee.
C. 8513	5844	6352	William Eufaula.
C. 9368	10262	6646	Sampson Emarthloche.
C. 7748	10296	6680	Tom Emarthla.
C. 9276	10250	6634	Echo Emarthla.
C. 6875	10129	6513	Jimhoker Emarthla.

Roll No.	Deed No.	File No.	Name.
C. 6876	10128	6512	Hattie Emarthla.
C. 3619	5850	6358	Arch N. Evans.
C. 8804	15555	7976	Pan-te-nay Fulsom.
C. 5911	16092	8713	Hitchete Frank.
C. 7156	10040	6424	Lucy Frank.
C. 6341	10145	6529	Polly Franklin.
C. 7834	10181	6565	Eliza Foley.
C. 6119	10104	6488	Minnie Foley.
C. 6636	10137	6521	Martha Fox.
C. 4563	5818	6327	Lucy Field.
C. 8194	15549	7970	Yahola Fixeco.
C. 6941	15529	7950	Anderson Fixeco.
C. 8381	10162	6546	Choela Fixico.
C. 8334	10158	6542	Nocus Fixeco.
C. 4298	5825	6333	Cheyamy Fixico.
C. 4706	5807	6316	Pahose Fixeco.
C. 6816	15527	7948	Barney Fisher.
C. 6817	10123	6507	George Fisher.
C. 8814	15556	7977	Hannah Fish.
C. 4078	5837	6345	Willie Fish.
C. 4753	5806	6315	Billy Fish.
C. 4754	5805	6314	Eliza Fish.
C. 7716	10195	6579	Billy Factor.
C. 7707	10198	6582	Youthlechee Factor.
C. 4657	5812	6321	Jessie Fife.
C. 553	5758	6267	John Fields.
C. 8864	10222	6606	Ross Hulsa.
C. 7698	10199	6583	Thomas Hulputta.
C. 8775	10017	6401	Sam Hoplye.
C. 9000	10032	6416	John Homer.
C. 8187	10269	6653	Chepe Homahta.
C. 8188	10268	6652	Mesela Homahta.
C. 8189	10267	6651	Folle Homahta.
C. 6447	15520	7941	Ida Hill.
C. 2662	15494	7916	Lucy Hill.
C. 4198	5833	6341	Noah Hinneha.
C. 7058	10087	6471	Amos Hickory.
C. 7447	10072	6456	Jesse Hill.
C. 7449	10071	6455	Lizzie Hill.
C. 7451	10070	6454	Sampson Hill.
C. 3448	5858	6336	Jennie Hill.
C. 5034	5789	6298	Hannah Hill.

Roll No.	Deed No.	File No.	Name.
C. 5784	15507	7928	Miley McWilliams.
C. 7490	10033	6450	Celia McPerryman.
C. 7124	10090	6474	Nannie McNac.
C. 6917	10049	6433	Peter McNac.
C. 503	5757	6263	Robert McNac.
C. 8518	10172	6556	James McHenry.
C. 2663	15495	7917	Walter McGilbray.
C. 8579	15551	7972	Aaron McGirt.
C. 5328	5773	6282	Alex McGirt.
C. 9516	15576	7997	Walter McDermott.
C. 8905	10219	6603	Thomas McCulla.
C. 8910	10218	6602	Nancy McCulla.
C. 7117	10093	6477	Eliza McCosar.
C. 7118	10092	6476	Ida McCosar.
C. 7119	10091	6475	Bettie McCosar.
C. 3010	5865	6373	Lemuel McCoy.
C. 8651	10112	6496	Sente Mulkussee.
C. 7531	10054	6438	Haga Monday.
C. 6740	10140	6524	David Monahwee.
C. 9247	10239	6623	Annie Moffitt.
C. 8670	10113	6497	Aggie Mitchell.
C. 7577	10205	6589	Johnson Miller.
C. 479	5756	6265	Robert Miller.
C. 7091	10088	6472	Okchiye Micco.
C. 5122	5783	6292	Lucy Yaholar.
C. 7547	10057	6441	Millie Yargee.
C. 8530	10173	6557	John Yargee.
C. 6922	10015	6399	Lila Yahola.
C. 8883	10221	6605	Dora Yahola.
C. 9072	15564	7985	Aney Yarholar.
C. 4841	5801	6310	Youbartka.
C. 8998	15560	7981	Yaffie.
C. 7603	10023	6407	James York.
C. 9273	10248	6332	Hardy Hennehuchee.
C. 8207	10177	6561	Chukchat Heneha.
C. 8093	10281	6665	Jeannetta Harjo.
C. 8096	10282	6666	Jennie Harjo.
C. 8901	10276	6560	George Harjo.
C. 7381	10078	6462	Nancy Lott.
C. 9143	15565	7986	Cora Lynch.
C. 8007	10272	6656	Lucy Long.
C. 8006	10271	6655	Kizzie Long.

Roll No.	Deed No.	File No.	Name.
C. 7139	10094	6478	Thomas Lakey.
C. 7976	15546	7967	Billie Micco.
C. 5508	15501	7922	Lizzie Lowe.
C. 7437	10073	6457	Levina Lowe.
C. 8890	10220	6604	Artiyarchee Micco.
C. 7983	15547	7968	Milker.
C. 3985	6601	6685	Rebecca Dyer.
C. 6983	10131	6515	Benjamin H. Drake.
C. 2174	5770	6279	Rachel F. Drew.
C. 7087	10084	6468	Alice Dorsey.
C. 9015	10230	6314	Jonas Dixon.
C. 8195	10263	6650	Jim Deer.
C. 9402	10234	6618	Eddie Deer.
C. 8216	10050	6434	Daniel Deer.
C. 3763	5851	6359	Lizzie Deer.
C. 3993	5843	6351	Thomas Deer.
C. 4045	5840	6348	Daniel Deer.
C. 8045	16095	8716	Ella Deer.
C. 7499	15533	7954	Katie Deere.
C. 6959	10108	6492	Peter Deere.
C. 3598	5854	6362	Tecumseh Deere.
C. 9271	10246	6330	Dewochee.
C. 8828	10226	6610	Ben Der isaw.
C. 7247	10101	6485	Susie Derrisaw.
C. 8206	10026	6410	Thompson Deo.
C. 9281	10252	6636	Joseph Davis.
C. 9246	10238	6622	Jesse Davis.
C. 8529	10059	6443	Jimmie Davis.
C. 3033	5868	6376	Martin Davis.
C. 4938	5793	6302	Annie Davis.
C. 4960	5792	6301	Esther Davis.
C. 5997	15511	7932	Selina Davis.
C. 5819	15509	7930	Martha Dawson.
C. 4673	5811	6320	Hittie Danly.
C. 9215	10235	6619	Thompson Daniel.
C. 1914	5772	6281	Jasper Daniels.
C. 8891	15559	7980	Takoser Tustenuggy.
C. 7095	10046	6430	Ned Tuckabatchee.
C. 3453	16087	8708	Topartheche.
C. 8920	10033	6417	Toot-ho-ye.
C. 5708	15506	7927	Lucy Toskey.
C. 8540	10174	6558	Lizzie Toney.

Roll No.	Deed No.	File No.	Name.
C. 9524	15577	7998	Edward B. Tiger.
C. 5188	15500	7921	Fannie Tiger.
C. 2631	15493	7915	Johnson Tiger.
C. 2892	15496	7918	Amanda Tiger.
C. 8619	10299	6683	Pa-sak-ta Tiger.
C. 9214	10286	6370	Sah co po chuny Tiger.
C. 9257	10241	6625	Goody Tiger.
C. 7712	10197	6581	Louis Tiger.
C. 8298	10156	6540	Wattie Tiger.
C. 6365	10134	6518	John Tiger.
C. 6336	10133	6517	Willie Tiger.
C. 6637	10132	6516	Jim Tiger.
C. 9209	10036	6420	Marsey Tiger.
C. 3938	6300	6684	David Tiger.
C. 3131	5863	6374	Tecumseh Tiger.
C. 3875	5847	6355	Pufney Tiger.
C. 5187	5781	6290	Leona Tiger.
C. 5317	5759	6268	Susan Tiger.
C. 8642	15552	7973	Otie Thompson.
C. 6735	15525	7946	Lucy Thompson.
C. 8443	5810	6319	Albert Thomas.
C. 7728	10193	6577	Cesar Thompson.
C. 8937	10217	6601	Little Thompson.
C. 7750	10185	6539	Te yo hee.
C. 8949	10215	6599	Tarhie Tebe.
C. 7586	10204	6588	Emma Taylor.
C. 6771	10141	6525	Jonas Taylor.
C. 7307	10079	6463	Jo-lo-lon-fah Taylor.
C. 7953	15541	7962	Mary Taylor.
C. 6015	15508	7929	Maria Taylor.
C. 5440	5804	6313	Thomas A. Stewart.
C. 7496	10035	6449	Martha Spaniard.
C. 7495	10034	6448	Chotie Spaniard.
C. 8805	10227	6611	Soc-con-tay.
C. 6449	10151	6535	Lahtah Solomon.
C. 6450	10150	6534	Celey Solomon.
C. 6653	10135	6519	Tecumseh Snow.
C. 6988	10130	6514	Sam Soloman.
C. 1256	5768	6277	Mary Snakeya.
C. 7895	15538	7959	George Smith.
C. 5825	15515	7936	Willie G. Smith.
C. 9283	10254	6638	Leo Smith.

Roll No.	Deed No.	File No.	Name.
C. 6317	10290	6374	Wesley Smith.
C. 8781	10277	6661	Wolke.
C. 8366	10161	6545	Francis Wolf.
C. 7411	10043	6427	Bettie Wolf.
C. 1476	5777	6286	Mary Wiley.
C. 6963	10287	6671	Seper Willior.
C. 8246	10116	6500	Wicey.
C. 9302	10259	6643	Ellen Williams.
C. 6644	10136	6520	Martha Williams.
C. 5252	5797	6306	Solomon Wilson.
C. 7715	10196	6580	George White.
C. 8099	10283	6657	Leah Wesley.
C. 6671	10155	6539	John Wesley.
C. 2300	5769	6278	Bettie May Wesley.
C. 4592	5814	6323	Feny West.
C. 9066	15563	7984	John Washington.
C. 7487	10068	6452	Marchie Washington.
C. 7488	10067	6451	Waitie Washington.
C. 5324	5760	6269	George Washington.
C. 5350	5786	6295	Robert L. Watts.
C. 4694	5808	6317	George W. Walker.
C. 9317	10260	6644	Kuncheva Harjo.
C. 9329	10261	6645	Jimmie Harjo.
C. 8958	10213	6597	Joe Tiger Harjo.
C. 7611	10203	6587	Nancy Harjo.
C. 7652	10202	6586	George Harjo.
C. 7227	10102	6486	Jennie Harjo.
C. 8313	10157	6541	Yarkinha Harjo.
C. 7083	10085	6469	Nellie Harjo.
C. 7082	10080	6464	Ka-pet cha Harjo.
C. 9298	10037	6421	Ispokoke Harjo.
C. 8574	10002	6386	Harjo.
C. 9539	15579	8000	Amos Harjo.
C. 9026	15562	7983	Nocus Harjo.
C. 6441	15519	7940	Peggy Harjo.
C. 6230	15517	7938	Betty Harjo.
C. 5589	15502	7923	Emarthla Harjo.
C. 6855	15528	7949	Wiley Hawkins.
C. 7281	10265	6649	Pink Hawkins.
C. 6860	10124	6508	Okla Hosta Hawkins.
C. 8706	10115	6499	Katie Hawkins.
C. 8433	10297	6681	Louis Hammer.

Roll No.	Deed No.	File No.	Name.
C. 2891	5871	6379	Hannah.
C. 7392	10077	6461	Artussee Henaha.
C. 8020	15578	7999	Sarah Harrod.
C. 8214	10175	6559	Melia (Nellie).
C. 8282	10208	6592	Hechiskoche.
C. 4156	5836	6344	Sam Marsey.
C. 4260	5841	6349	Marhoyee.
C. 5039	5787	6296	Samuel Marks.
F. 2168	17335	9215	Lilly Marshall.
C. 8803	15554	7975	Lizzie Marshall.
C. 4002	15498	7919	Hepsey Marshall.
C. 6844	10125	6509	Lizzie Manley.
C. 7869	15535	7956	Fannie Manley.
C. 9493	15573	7994	Wilson McKellop.
C. 9014	10229	6613	Nancy.
C. 8432	10167	6551	David Bruner.

The Commission does not say whether proof of death in each instance has been filed with them, but it is presumed by the office that such proof has been filed.

In view of the opinion of the Assistant Attorney General mentioned herein, it would seem that authority for the cancellation of such deeds and the records thereof and the issuance of new ones should be granted and the office so recommends.

Very respectfully,

A. C. TONNER,
Acting Commissioner.

G. A. W.—W. D. W.

(Copy.)

DEPARTMENT OF THE INTERIOR,
WASHINGTON, June 7, 1904.

E. A. F. •

I. T. D. 4516—1904.
L. R. S.

Commission to the Five Civilized Tribes, Muskogee, I. T.

GENTLEMEN: May 23, 1904, the Commission transmitted 484 deeds to the heirs of deceased citizens of the Creek Na

tion, which deeds have heretofore been approved by the Secretary of the Interior. You state that these deeds cover allotments of 160 acres each in one deed, and it is thought that under the opinion of the Assistant Attorney General for the Department, dated August 20, 1903, they should be cancelled and separate deeds covering the designation of a homestead of 40 acres and an allotment of 120 acres in lieu of the single deeds covering 160 acres each, be prepared and issued in their stead. You therefore request that authority be granted the Commission to cancel said deeds and the records thereof, and to prepare new deeds to the heirs of such citizens, whose names, roll numbers, and deed numbers appear in your said letter of May 23.

Reporting June 2 the Acting Commissioner of Indian Affairs recommends that your request be granted. A copy of his letter is inclosed herewith.

The deeds transmitted are returned herewith, and you are hereby authorized to cancel the record thereof and to request the Principal Chief of the Creek Nation to cancel the deeds. When the deeds are canceled you are requested to forward them, together with the new deeds made in accordance with your suggestion, to the Department for appropriate action.

Respectfully,

(Signed)

E. A. HITCHCOCK, *Secretary.*

485 Inclosures.

(Copy.)

Refer in reply to the following: Land 68471—1904.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, October 8, 1904.

The Honorable the Secretary of the Interior.

SIR: I have the honor to transmit herewith a communication from the Commission to the Five Civilized Tribes dated September 28, 1904, transmitting twenty-seven homestead and twenty-seven allotment deeds to citizens in the Creek Nation.

The Commission state that proof of death of each of these citizens has been filed with them, and they request authority to cancel these deeds and the records thereof, and to sub-

stitute in lieu new deeds covering the allotment to heirs in accordance with the opinion of the Assistant Attorney General of the Interior Department dated August 20, 1903.

The Fifty-four deeds are transmitted herewith, with the recommendation that the Commission be granted the authority as requested.

Very respectfully,

A. C. TONNER,
Acting Commissioner.

C. T. C.—A. A. G.

(Copy.)

F. H. E.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, October 12, 1904.

I. T. D. 10140—1904.

L. R. S.

Commission to the Five Civilized Tribes, Muskogee, Indian Territory.

GENTLEMEN: With your report of September 28, 1904, you transmitted 27 homestead and 27 allotment deeds to citizens in the Creek Nation, stating that proof of death of each of these citizens has been filed with your commission, and requesting authority to have cancelled the said deeds and the records thereof, and to substitute in lieu thereof new deeds covering the allotment to heirs in accordance with the opinion of the Assistant Attorney General of this Department dated August 20, 1903.

Reporting in the matter October 8, 1904, the Acting Commissioner of Indian Affairs concurs in your recommendation.

The Department also concurs, and authority is granted as requested. The deeds are returned herewith for cancellation in the usual manner, and a copy of the Acting Commissioner's letter is inclosed.

Respectfully,
(Signed)

THOS. RYAN,
Acting Secretary.

55 Inclosures.

(Copy.)

Land 71598—1905.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, September 18, 1905.

The Honorable the Secretary of the Interior.

SIR: I have the honor to transmit herewith a report from Commissioner Bixby, dated September 2, 1905, transmitting 7 homestead and 18 allotment deeds, to citizens of the Creek Nation. Proof of death of each of these citizens has been filed in the office of the Commissioner, showing that the allottees died prior to the date of execution of said deeds. The Commissioner requests Departmental authority to cancel these deeds, and the records thereof, and to substitute in lieu new deeds covering the allotments to the heirs, in accordance with the opinion of the Assistant Attorney General of the Indian Territory Department, dated August 20, 1903.

The Commissioner states that from the delivery stamped deeds to John Atkins, Tommie Davis, Sallie Kernall, and Anna Escocoe, the same have been delivered, but that in each instance the office of the Commissioner is in possession of an affidavit of death, showing that the allottee died prior to the date of execution. Also proof of death has been filed in the case of special allotment deed to Leah Stevenson covering an area of 7.51 acres, showing that the allottee died prior to the execution of the deed. The 17 homestead and 18 allotment deeds are enclosed herewith, and it is respectfully recommended that the authority requested by the Commissioner be granted in order that new deeds may be issued to the heirs in proper form.

Respectfully,

C. F. LARRABEE,
Acting Commissioner.

C. T. C.
L. C.

I. T. D. 12212-1905.
L. R. S.

F. H. E.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, September 23, 1905.

Commissioner to the Five Civilized Tribes, Muskogee, Indian Territory.

SIR: The Department is in receipt of your letter of September 2, 1905, transmitting 17 homestead and 18 allotment deeds to citizens of the Creek Nation, and requesting authority for the cancellation of said deeds in the usual manner and the issuance of new deeds in lieu thereof to the heirs of the allottees, proof of death of each of the allottees having been filed in your office showing that the allottees died prior to the date of execution of said deeds.

Reporting September 18, 1905, the Indian Office recommends that the authority requested be granted. A copy of its letter is inclosed.

The Department also concurs, and authority is hereby granted for the cancellation of said deeds and the issuance of new and proper deeds to the heirs of the allottees.

The deeds are returned herewith.

Respectfully,

THOS. RYAN,
Acting Secretary.

Through the Commissioner of Indian Affairs.
36 inclosures.

(Copy.)

M.—411.

MUSKOGEE, INDIAN TERRITORY, January 6, 1906.

Honorable P. Porter, Principal Chief Creek Nation, Muskogee, Indian Territory.

DEAR SIR: If in your possession, will you please return to this office deeds Nos. 22276 and 22277 in favor of Mollie Lucas, Creek Indian Roll No. 7884, and deeds Nos. 19512 and 19513 in favor of Kogee Smith, Creek Indian Roll No.

6043, for the reason that there appears to be a conflict in the description of their allotments.

Respectfully,

Commissioner.

Department of the Interior.
Commissioner to the Five Civilized Tribes.
Muskogee Land Office.

Whereas, on August 23, 1902, the Commission to the Five Civilized Tribes, arbitrarily allotted to Mollie Lucas, Creek Indian Roll No. 7874, the North Half of the South Half of the North West Quarter of the North East Quarter of the South East Quarter and the North Half of the South West Quarter of the North East Quarter of the North East Quarter of the South East Quarter of Section 14, Township 8 North and Range 13 East, containing 3.75 acres, and,

Whereas, on March 17, 1903, the same land was allotted to Kogee Smith, Creek Indian Roll No. 6043, upon the personal application of her father, Joe Smith, and,

Whereas, deeds Nos. 19512 and 19513 prepared to cover an allotment to the said Kogee Smith were, on November 18, 1905, delivered to the said Joe Smith and have not been returned to this office, and,

Whereas, deeds Nos. 22276 and 22277 prepared to cover an allotment in the Creek Nation to the said Mollie Lucas were returned to this office on January 11, 1906, by the Principal Chief of the Creek Nation, same being undelivered,

It is, therefore, ordered, that the allotment made to Mollie Lucas on August 23, 1902, be cancelled, in so far as it conflicts with the allotment of the said Kogee Smith.

(Signed)

TAMS BIXBY,
Commissioner.

Muskogee, Indian Territory, January 23, 1906.

MUSKOGEE, INDIAN TERRITORY, January 25, 1906.

The Honorable the Secretary of the Interior.

SIR: On August 23, 1902, the Commission to the Five Civilized Tribes arbitrarily allotted to Mollie Lucas, whose name appears on Creek Indian Roll, opposite No. 7884, the North Half of the South Half of the North West Quarter

of the North East Quarter of the South East Quarter and the North Half of the South West Quarter of the North East Quarter of the North East Quarter of the South East Quarter of Section 14, Township 8 North, Range 13 East, containing 3.75 acres.

On March 17, 1903, through an error of this office, the same land was allotted to Kogee Smith, a minor, whose name appears on Creek Indian Roll, opposite No. 6043, upon the personal application of her father, Joe Smith.

Deeds Nos. 22276 and 22277 prepared to cover an allotment in the Creek Nation to Mollie Lucas were executed by the Principal Chief of the Creek Nation on November 10, 1903, approved by the Department January 8, 1904, and recorded in the office of the Commission to the Five Civilized Tribes in Book 20, at page 173. These deeds were, on January 11, 1906, returned by the Principal Chief, same having been undelivered.

Deeds Nos. 19512 and 19513 prepared to cover an allotment to Kogee Smith were, on November 18, 1905, delivered by the Principal Chief to the said Joe Smith.

It appears, therefore, that, notwithstanding the date of the allotment to Kogee Smith is subsequent to that of Mollie Lucas, yet, Kogee Smith is the one to whom title has passed, inasmuch as the delivery of her deeds has been affected.

As the allotment of Mollie Lucas was purely an arbitrary designation on the part of the Commission and the allotment of Kogee Smith was personally selected by her father, I respectfully request that this office be authorized to cancel the deeds covering the allotment of Mollie Lucas and the records pertaining thereto.

Deeds Nos. 22276 and 22277 are herewith inclosed for Departmental disposition.

Respectfully,

Acting Commissioner.

Through the Commissioner of Indian Affairs.
Enc. N. E. W. 2.

(Copy.)

Refer in reply to the following: Land. 9128-1906.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
WASHINGTON.

March 7, 1906.

The Honorable the Secretary of the Interior.

SIR: There is enclosed a report from the Commissioner to the Five Civilized Tribes, dated January 25, 1906, saying that on August 23, 1902, the Commission arbitrarily allotted to Mollie Lucas, whose name appears on the Creek roll of citizens by blood, at No. 7884, the N/2 of the S/2 of the NW/4 of the NE/4 of the SE/4, and the N/2 of the SW/4 of the NE/4 of the NE/4 of the SE/4, section 14, township 8 north, range 13 east, 3.75 acres; that on March 17, 1903, through error, the same land was allotted to Kogee Smith, a minor, who is enrolled at No. 6043 of the roll of citizens by blood of the Creek Nation; that deeds numbered 22276 and 22277 were prepared to cover the allotment to Mollie Lucas and were executed by the Principal Chief on November 10, 1903, approved by the Department on January 8, 1904, and recorded by the Commission to the Five Civilized Tribes in Book 20, page 173.

He says that on January 11, 1903, these deeds were returned by the Principal Chief, with the information that they had not been delivered; that deeds numbered 19512 and 19513, covering the allotment of Kogee Smith, were delivered on November 18, 1905, to Joe Smith, his father; and that it appears that, notwithstanding the date of the allotment of Kogee Smith is subsequent to that of Mollie Lucas, title has passed to Kogee Smith, inasmuch as his deeds have been delivered.

Mr. Bixby recommends the cancellation of the deeds in favor of Mollie Lucas and asks that he be authorized to cancel the records pertaining thereto.

It is shown that the allotment to Mollie Lucas was made arbitrarily by the Commission; that the deeds have not been delivered; and that the same land was allotted to Kogee Smith, and the Office concurs in the recommendation of the Commissioner to the Five Civilized Tribes that the deeds be

canceled, as they have not been delivered, and that he be authorized to cancel the records relating to them.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

G. A. W.—G. H.
4 enclosures.

(Copy.)

DEPARTMENT OF THE INTERIOR, WASHINGTON.

I. T. D. 4026-1906.
L. R. S.

F. H. E.

March 13, 1906.

The Commissioner to the Five Civilized Tribes, Muskogee,
Indian Territory.

SIR: February 25, 1906, your office requested authority to cancel Creek deeds Nos. 22276 and 22277, covering land arbitrarily allotted to Mollie Lucas, and which were returned undelivered by the Principal Chief on January 11, 1906, in appearing that deeds Nos. 19512 and 19513, covering the same land, were subsequently issued to Kogee Smith, and delivered.

Reporting March 7, 1906 (Land 9128-06), the Indian Office recommends that the authority requested be granted. A copy of its letter is inclosed.

Said deeds Nos. 22276 and 22277 are returned herewith, and authority is granted for their cancellation in the usual manner.

Respectfully,
(Signed)

THOS. RYAN,
First Assistant Secretary.

3 inclosures.

Through the Commissioner of Indian Affairs.

M-411.

MUSKOGEE, INDIAN TERRITORY, April 24, 1906.

Principal Chief of the Creek Nation, Muskogee, Indian Territory.

DEAR SIR: Under date of March 20, 1906 (I. T. D. 4026), the Department granted authority for the cancellation of deeds numbered 22276 and 22277, prepared to cover an allotment in the Creek Nation to Mollie Lucas, Creek Indian Roll number 7884, for the reason that a portion of the land described therein had on a prior date been deeded to another allottee of the Creek Nation. Authority was also granted for the execution of new deeds in lieu thereof showing the correct description of the allotment of the said Mollie Lucas.

All deeds are inclosed herewith for appropriate action by you after which kindly return to this office in order that they may be transmitted to the Department for consideration.

Respectfully,

Commissioner.

J. B. M.

Inc. M-19.

(Copy.)

DEPARTMENT OF THE INTERIOR, J. R. W.
Office of the Assistant Attorney-General. S. V. P.

I. T. D. W. C. P.
4350-1906.

WASHINGTON, May 4, 1906.

The Secretary of the Interior.

SIR: I received by reference of April 7, 1906, the papers in the matter of single deeds issued to deceased Creek allottees for decedents' entire allotment, without selection or designation of a homestead or separate conveyance of it. About forty-nine such single deeds have been issued, but the dates of death and ages of decedents are such as to exclude the fact that more than eleven could have left issue born after May 25, 1901.

The laws for allotment to Creek Indians provide for issue of two separate deeds—one for forty acres as his homestead, conveying a particular estate, limited, and descending to

particular heirs, and one for one hundred and twenty acres, descending to heirs generally (acts of March 1, 1901, 31 Stat., 86, and June 30, 1902, 32 Stat., 500).

The Commissioner to the Five Civilized Tribes, February 12, 1906, discussing the cases generally, expressed opinion to the effect that:

1. The selection of a homestead and separate conveyance of it and of the general allotment are "conditions precedent, necessary to be performed before good title can be conveyed to the Creek allottee or his heirs in every case in which the rights of the fifth class (children born after May 25, 1901,) may by any possibility be affected," and that the selection of the homestead prior to any conveyance is essential to validity of the deed, in any case "where the original allottee or children born to him subsequent to May 25, 1901, are in being," but that "where a Creek allottee dies leaving no children born subsequent to May 25, 1901, a single deed * * * otherwise regular, constitutes a substantial compliance with the provisions of the Creek agreements * * * and will convey * * * good title to the whole of such deceased citizen's allotment."

The Commissioner specifies the eleven decedents who may have left children born to them after May 25, 1901, and as to the forty-nine instances of conveyance of the entire allotment of a decedent by one deed reports that he is reliably informed that in some cases the lands have been disposed of by the decedent's heirs to purchasers, and the titles have become complicated and clouded. He therefore recommends that in the thirty-eight cases wherein there could have been no issue born to the allottee after May 25, 1901, the single deed be allowed to stand; and as to the eleven cases that an investigation be had to ascertain the fact, and if no issue born after May 25, 1901, exists, such deeds be allowed to stand, and where such issue is found proper action be taken.

The Indian Office was of opinion that the law is mandatory, that two deeds must issue, and refers to the case of Bessie Watson, who died March 25, 1901, aged ten years, to whom, it is for illustration assumed, a deed issued the day after her death, which for such fact is void. The Indian Office is of opinion that the fact that some person may claim to have acquired title to the land after delivery of such deed is no reason wherefore such deed should not be canceled and a proper one issue, and reference is made to my opinion of

August 20, 1903, in allotment of John S. Meagher, deceased, concluding the matter.

I am unable to concur in the view expressed by the Commissioner of the Five Civilized Tribes—that such deeds improperly issued convey title and will be sustained by the courts in cases that decedent had no issue born after May 5, 1901. I am unable to see any principle on which such title can be founded. The deed having been made in violation of the law governing the officers who execute it is void from its inception for want of power of the officer to convey. It is like a patent for public land issued without authority of law or in violation of law. Such patents are void, and need no cancelation. The court so held in *Burfenning v. Chicago, St. Paul, &c., Ry.*, 163 U. S., 321, 323. They are simply inoperative and stand as blank paper. There need be no reconveyance of the title attempted to be conveyed, for the simple reason that no title was conveyed. The inadvertent issue of such deed is therefore no obstacle to the issue of proper ones. If equitable rights in such cases have been vested by conveyances of the proper persons, the title when passed will inure to the holder of the equitable interest. If no equitable right has vested, the one entitled to succession ought to be vested with a complete title. It is to the true interest of all claimants that legal title be issued. Then, all vested rights, legal and equitable, will be conserved.

Very respectfully,

FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved May 4, 1906.

E. A. HITCHCOCK,
Secretary.

J. P.

Department of the Interior, F. H. E.

I. T. D. 7470-1906.

WASHINGTON, May 9, 1906.

L. R. S.

The Commissioner to the Five Civilized Tribes, Muskogee, Indian Territory.

SIR: Referring to your letter of February 12, 1903, relative to a single Creek deed issued in the name of Katie Miller,

and certain other similar deeds, there is inclosed a copy of the opinion of the Assistant Attorney General of May 4, 1906, which has been approved, relative to such "single deeds." You will be governed thereby.

The Miller deed having been found in the Indian Office, is inclosed, together with a copy of the Indian Office letter of March 13, 1906 (Land 17396), submitting your communication.

Respectfully,

JESSE E. WILSON,
Assistant Secretary.

3 inclosures.

Through the Commissioner of Indian Affairs.

[Endorsed:] (Filed.) No. 18460. Commissioners to Five Tribes. Received May 16, 1906. 41,110. Department, Wilson, Washington, D. C., May 9, 1906. Transmits copy of opinion of Assistant Attorney General of May 4, 1906, relative to "single deeds" and directs that Commission be governed accordingly in matter of case of Katie Miller.

MUSKOGEE, INDIAN TERRITORY, May 5, 1906.

The Honorable the Secretary of the Interior.

SIR: Under date of March 13, 1906 (I. T. D. 4026), the Department granted authority for the cancellation of deeds numbered 22276 and 22277 prepared to cover an allotment in the Creek Nation to Mollie Lucas, whose name appears upon Creek Indian roll opposite number 7884, for the reason that a portion of the land therein described had been allotted to another citizen of the Creek Nation and deeds issued therefor. In accordance with such authority the Principal Chief of the Creek Nation on April 25, 1906, cancelled his signature to said deeds and executed in lieu thereof new deeds bearing the same numbers and covering a correct description of the allotment of the said Mollie Lucas.

I now have the honor to inclose all deeds herewith and respectfully recommend that the cancellation of the old deeds and the execution of new deeds in lieu thereof be approved.

Respectfully,

Acting Commissioner.

J. B. M.

Inc. M-3.

Through the Commissioner of Indian Affairs.

Department of the Interior.

Office of Superintendent for the Five Civilized Tribes,
Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes of Indians, and the disposition of the land of said tribes, and that the above and foregoing are true and correct copies of letter press copies of telegrams and letters, and other documents on file in this office, as follows:

Telegram dated October 13, 1897.	Book A, page	165
Amendment of September 27, 1897, reasons why it was rejected by Creek Council, approved November 3, 1897.		
Letter dated July 11, 1898.....	Book B, page	273
Letter dated Aug. 6, 1898.....	" B, "	432
Letter dated January 23, 1901...	" 36, "	17
Letter dated March 25, 1902.....	" 4, "	95
Telegram dated April 8, 1902...	" 4, "	168
Letter dated December 4, 1897...	" A, "	277
Letter dated June 15, 1899.....	" K, "	315
Letter dated May 16, 1904.....	" 19, "	360
Letter dated January 31, 1907...	" 826, "	367
Letter dated Oct. 6th, 1897.....	" A, "	45
Telegram dated November 1, 1897	" A, "	163
Letter dated November 4, 1897...	" A, "	156
Letter dated October 25th, 1898, from Secretary of the Interior to Hon. Henry L. Dawes.		
Letter dated November 9, 1898..	Book D, page	263
Letter dated February 14, 1899..	" G, "	10
Letter dated July 28th, 1899....	" M, "	63
Letter dated August 15, 1899...	" M, "	395
Letter dated August 28, 1899...	" N, "	102
Letter dated September 11, 1899..	" N, "	362
Letter dated September 11, 1899..	" N, "	361
Letter dated September 15, 1899..	" N, "	433
Letter dated September 19, 1899..	" N, "	425

Letter dated November 22, 1899..	"	R,	"	9
Letter dated December 4, 1899...	"	R,	"	43
Letter dated December 4, 1899...	"	R,	"	41
Letter dated December 23, 1899...	"	U,	"	5
Letter dated December 23, 1899...	"	U,	"	9
Letter dated December 27, 1899.	"	U,	"	19
Letter dated January 4, 1900....	"	V,	"	10
Special Dispatch to <i>The Times</i> ..	"	7,	"	26
Letter dated April 21, 1900....	"	8,	"	19
Letter dated January 17, 1901...	"	35,	"	5
Letter dated March 2, 1901.....	"	41,	"	10
Letter dated March 6, 1901.....	"	42,	"	5
Letter dated March 6, 1901.....	"	42,	"	5
Letter dated March 6, 1901.....	"	42,	"	6
Letter dated March 6, 1901.....	"	42,	"	5
Letter dated March 11, 1901.....	"	43,	"	21
Letter dated March 14, 1901.....	"	43,	"	23
Letter dated Apr. 5th, 1901, signed N. G. Gregory, to Hon. Dawes Commission.				
Letter dated April 11, 1901.....	Book 46,	page		42
Letter dated April 12, 1901.....	" 46,	"		45
Circular letter of P. Porter, Prin- cipal Chief, dated April 30, 1901.				
Order of John R. Thomas, Judge of U. S. Court, Northern Dis- trict of Indian Territory, dated May 1, 1901.				
Letter dated May 20, 1901.....	Book 52,	page		25
Letter dated May 21st, 1901.....	" 52,	"		356-
Letter dated May 22, 1901.....	" 52,	"		375-
Letter dated May 22, 1901.....	" 52,	"		364-
Letter dated May 22, 1901.....	" 52,	"		380-8
Letter dated June 21, 1901.....	" 56,	"		35
Letter dated July 13, 1901.....	" 59,	"		32
Letter dated July 13, 1901.....	" 59,	"		35
Letter dated November 12, 1901..	" 1,	"		42
Letter dated November 24, 1906..	" 787,	"	256 &	27
Telegram dated March 2, 1901...	" 41,	"		29
Letter dated June 12, 1901.....	" 55,	"		31
Letter dated December 8, 1902..	" 10,	"		31

- Resolution by the National Council of the Muskogee Nation approved May 15, 1895.
- Act of National Council of Creek Nation approved May 30, 1895.
- Act of National Council of Creek Nation approved November 6, 1896.
- Letter dated January 30, 1901... Book 1, page 12-13-14
- Letter of P. Porter to House of Kings and Warriors dated November 27, 1901.
- Letter from A. P. McKellop and H. C. Reed, dated November 27, 1901, to Hon. P. Porter.
- Resolution of the National Council of the Muskogee Nation approved December 2, 1901.
- Telegram dated July 11, 1902... Book 7, page 196
- Letter dated June 25, 1903..... " 14, " 17
- Excerpt from First Annual Message of P. Porter, Principal Chief, October 4, 1904.
- Letter dated September 13, 1906. " 37, " 48
- Telegram (no date) to Secretary of Interior " 15, " 45
- Act of Creek Council *in re* fraudulent enrollments, approved November 2, 1906.
- Departmental letter of August 25, 1903, and opinion of F. L. Campbell, Assistant Attorney-General, dated August 20, 1903, regarding issuance of homestead and allotment deeds to deceased Creek citizens.
- Departmental letter of June 2, 1904, regarding issuance of deeds to deceased Creek allottees.
- Departmental letter of June 7, 1904, regarding issuance of deeds to deceased Creek allottees.

- Indian Office letter of October 8, 1904, to Secretary of Interior *in re* cancellation of Creek deeds.
- Departmental letter of October 12, 1904, granting authority for cancellation of Creek deeds.
- Indian Office letter of September 18, 1905, to Secretary of Interior recommending cancellation of Creek deeds.
- Departmental letter dated September 23, 1905, *in re* cancellation of Creek deeds.
- Letter dated January 6, 1906. . . . Book M, page 411
- Order of Commissioner to Five Civilized Tribes cancelling allotment of Mollie Lucas.
- Letter dated January 25, 1906. . . Book 31, page 184
- Indian Office letter to the Secretary of the Interior dated March 7, 1906, recommending cancellation of deeds to Mollie Lucas.
- Departmental letter dated March 13, 1906, authorizing cancellation of deeds to Mollie Lucas.
- Letter dated April 24, 1906. . . . Book M, page 411
- Indian Office letter of May 4, 1906, to Secretary of Interior regarding issuance of deeds to deceased Creek allottees.
- Departmental letter of May 9, 1906, regarding issuance of deeds to deceased Creek allottees.
- Letter dated May 5, 1906. Book 33, page 150

JOE H. STRAIN,

*Acting Superintendent for the
Five Civilized Tribes.*

April 3, 1917.
J. R. P.

Excerpt from "Report of the Commission Appointed to Negotiate with the Five Civilized Tribes of Indians. Known as The Dawes Commission," Dated at Fort Smith, Arkansas, November 18, 1895.

MISRULE IN THE TERRITORY.

A greater familiarity with the condition of affairs in the Territory than the Commission had at the time of making their last report does not enable it to abate anything of its representation of the deplorable state of affairs as therein stated. They are not only compelled to reaffirm all that they reported of the utter perversion of justice by those who have gotten possession of the machinery and funds of its administration in this Territory, inflicting in its name and that of the lawmaking power irreparable wrongs and outrages upon a helpless people for their own gain, but they are compelled to report that statistics and incontrovertible evidence shows a much more deplorable and intolerable state of affairs than was there presented. They refer to that report for a more extended detail of the character of the misrule which exists among these people, and make that more particular description than is here necessary a part of this report. If the end of government and the administration of justice is the protection of the life and liberty and property of the citizen, then the governments and courts of these nations are a failure, for they afford that protection to neither. They are powerless to these ends, and the victims of this misrule are helpless sufferers at the mercy of the malign influences which dominate every department and branch of the governments as administered here. It matters little, except as to the character of the remedy, whether this failure and misrule arises from the impotence or willful and corrupt purpose, the evil consequences are incalculable and its continuance unjustifiable. It is no less true now than when the Commission reported last year that "all of the functions of the so-called governments of these five tribes have become utterly unable to protect the life or property rights of the citizen. Their courts of justice have become powerless and paralyzed. Violence, robbery, and murder have become almost of daily occurrence, and no effective measures of restraint or punishment are put forth by these governments and courts to suppress crime.

Railroad trains continue to be stopped and their passengers robbed in the very presence of those in authority. A reign of terror exists, and barbarous outrages almost impossible of belief are enacted, and the perpetrators hardly find it necessary to shun daily intercourse with their victims."

The United States district court at Fort Smith, Ark., has been given jurisdiction in the Indian Territory only over crimes committed by an Indian upon a white man or by a white man upon an Indian. Of all crimes committed by Indians upon Indians the Indian courts still have sole jurisdiction. In this limited jurisdiction of the United States court the present able and upright judge has, since his appointment in 1875, sentenced to death on conviction in his court 153 persons, and there are today in the United States jail at Fort Smith under sentence of death appealed on questions of law 20. Of these 20 have been convicted the present year, the largest number in any one year. There are now under indictment for murder and awaiting trial 13 others and several are in jail awaiting examination. There is also the United States court at Paris, Tex., having similar jurisdiction in the Indian Territory, the records of which show that since 1890 there have been 22 sentenced to death for murders committed in the Territory, and there are now under indictment 128, nearly all of whom are eluding arrest. How many murders in addition to these have been committed by Indians upon Indians, of which their courts have exclusive jurisdiction, there is no record available, but there is good reason to believe that they exceed these numbers. Reliable newspapers and individuals who have endeavored to obtain accurate information as to the prevalence of crime in the Territory agree in the statement that up to November 1 there had been 25 murders committed in the Territory since the last adjournment of Congress. Of course there have been many others not thus ascertained. If other crimes have in any degree proportion to that of murder in the Territory the condition must be appalling and cannot fail to call loudly for a remedy.

In addition to these statistics of prevalent crime taken from judicial records and other authentic sources there is equal clear evidence of organized force in active operation intimidating and putting in peril witnesses who appear in court to testify for the government in these cases. In cases of the most serious character now pending in these courts the witnesses have been, one by one, secretly assassinated. In other

they have disappeared, and whether slain or not is not likely to be known until, by the failure of justice thus brought about, those charged with the most atrocious crimes have gone free. This terrorism makes it most difficult to obtain in the first instance witnesses to appear in court, knowing that by doing so they expose themselves to all possible persecution and personal danger, even to loss of life. In spite of the best efforts of the United States courts there is for this reason a most lamentable frequent failure of bringing to justice those guilty of the most flagrant crimes in the Indian Territory.

The terrorism and intimidation is extended even to those who appear before this Commission with information as to the condition of affairs in the Territory and offer their views as to necessary changes. Not infrequently have highly respected citizens of these nations requested the Commission to withhold their names from any connection with the statements made by them as a necessary precaution to personal safety. And in the discussion among themselves of the questions involved they for the same reason take care that it shall be only in the presence of those whom they can trust not to betray them to others who are hostile to the objects of this Commission.

Recently the mayor of one of the towns which have sprung up in the Territory, a man of known integrity and irreproachable character, appeared before the Commission and presented his knowledge of the condition of affairs and his views of the necessity of a change. In a few days the Commission were in receipt of a letter from him informing them that he had been followed in Missouri, where he went on business, by two armed Indians, who informed him that he would be killed if he returned home through the Territory. He called upon the Commission for protection, which it had no power to give. This is not a singular instance, but the like of it is so frequent as to disclose a condition of affairs as deplorable as it is intolerable.

CONCLUSIONS.

The Commission was charged with the duty of negotiation only. They have been clothed with no authority beyond presenting to these "nations" such reasons as might induce them to consent to a change of their tribal holdings and gov-

ernments upon terms that shall be just and equitable to all concerned, to be made binding only after ratification by the tribes themselves and the United States. Keeping strictly within their instructions, they have presented to these nations every argument and consideration open to them calculated to make clear the necessity, the justice, and the benefit of such a change in the tenure of their tribal property and in their tribal governments as will conform all to our national system and prepare them to become a part of it. The Commission has found, however, that those having authority to consider these proposed changes are the very persons whose interest it is to prevent them, and that the longer the present conditions continue the greater will be their gain. Every selfish instinct of those holding the power to consider propositions for a change is therefore arrayed against its exercise. They have declined directly, or ignored altogether, all formal propositions for negotiation made to them, and in informal conferences have made it clear that no considerations will voluntarily relinquish their present opportunities for vast gain and consent to share equally with all the Indian citizens that tribal property the United States originally placed in the custody of these "nations" for the common use of all, or to exchange the power they now possess to perpetuate their exclusive use of common property and dictate the character and terms of government under which these people live for anything analogous to the institutions of our own Government by which they are surrounded. The very men who, in the manner heretofore described, have got in their personal grasp the vast tribal wealth of these "nations," elect and control the legislators in their councils, and denominate the work of this Commission as the "interference of a foreign power not to be tolerated, and seek to punish with the penalties of treason any citizen Indian found advocating a change that shall require equal rights and equal participation.

The Commission is compelled to report that so long a power in these nations remains in the hands of those now exercising it, further effort to induce them by negotiation to voluntarily agree upon a change that will restore to the people the benefit of the tribal property and that security and order in government enjoyed by the people of the United States will be vain.

The Commission is therefore brought to the consideration

of the question: What is the duty of the United States Government toward the people, Indian citizens and United States citizens, residing in this Territory under governments which it has itself erected within its own borders?

No one conversant with the situation can doubt that it is impossible of continuance. It is of a nature that inevitably grows worse, and has in itself no power of regeneration. Its own history bears testimony to this truth. The condition is every day becoming more acute and serious. It has as little power as disposition for self reform.

Nothing has been made more clear to the Commission than that change, if it comes at all, must be wrought out by the authority of the United States. This people have been wisely given every opportunity and tendered every possible assistance to make this change for themselves, but they have persistently refused and insist upon being left to continue present conditions.

There is no alternative left to the United States but to assume the responsibility for future conditions in this Territory. It has created the forms of government which have brought about these results, and the continuance rests on its authority. Knowledge of how the power granted to govern themselves has been perverted takes away from the United States all justification for further delay, insecurity of life and person and property increasing every day makes immediate action imperative.

The pretense that the Government is debarred by treaty obligation from interference in the present condition of affairs in this Territory is without foundation. The present conditions are not "treaty conditions." There is not only no treaty obligation on the part of the United States to maintain, or even to permit, the present condition of affairs in the Indian Territory, but on the contrary the whole structure and tenor of the treaties forbid it. If our Government is obligated to maintain the treaties according to their original intent and purpose, it is obligated to blot out at once present conditions. It has been most clearly shown that a restoration of the treaty status is not only an impossibility, but if a possibility, would be disastrous to this people and against the wishes of all, people and governments alike. The cry, therefore, of those who have brought about this condition of affairs, to be let alone, not only finds no shelter in treaty ob-

ligations but is a plea for permission to further violate those provisions.

The Commission is compelled by the evidence forced upon them during their examination into the administration of the so-called governments in this Territory to report that these governments in all their branches are wholly corrupt, irresponsible and unworthy to be longer trusted with the care and control of the money and other property of Indian citizens, much less their lives, which they scarcely pretend to protect.

There can be no higher obligation incumbent upon every branch of the General Government than to exert its utmost constitutional authority to secure to this people, in common with all others within our borders, government in conformity with constitutional authorities. The Government cannot abdicate or transfer to other shoulders this duty as to any portion of territory or people in the land. It cannot escape responsibility if the dark record which has now been brought to light is permitted to continue. Delay can bring nothing but increased difficulty and danger to peace and good order in the Territory. The situation calls for prompt action. These considerations lead but to one conclusion.

It is, in the judgment of the Commission, the imperative duty of Congress to assume at once political control of the Indian Territory. They have come with great reluctance to this conclusion, and have sought by all methods that might reach the convictions of those holding power in the Territory to induce them by negotiation and mutual agreement to consent to a satisfactory change in their system of government and appropriation of tribal property. These efforts have failed, and the Commission is driven to the alternative of recommending abandonment of these people to the spoliation and outrages perpetrated in the name of existing governments or the resumption by Congress of the power thus abused.

They therefore recommend immediate legislation as follows:

1. A Territorial government over the Five Civilized Tribes, adapted to their peculiarly anomalous conditions, so framed as to secure all rights of residents in the same, and without impairing the vested rights of the citizen Indian or other person not an intruder.

2. The extension of the jurisdiction of the United States

courts in the Territory, both in law and equity, to hear and determine all controversies and suits of any nature concerning any right in or use and occupation of the tribal lands of the several nations, to which any citizen Indian or other person, or the tribal government of any nation, is or may be made a party plaintiff or defendant.

The Commission is confident that such a government wisely administered will restore the observance of law and preserve order among the people residing in these several nations, and make secure their lives and all just property rights. And that the determination in the United States courts of the most important and complicated questions in which the tenure of their land is unfortunately involved, lifting them out of the unhealthy and unreliable influences which prevail in the Indian courts, where now alone they are disposed of, would go far toward a solution of the difficult problem the present condition of the Territory presents.

Respectfully submitted,

HENRY L. DAWES.
FRANK C. ARMSTRONG.
ARCHIBALD S. McKENNON.
THOMAS B. CABANISS.
ALEXANDER B. MONTGOMERY.

Excerpt from "Five Civilized Tribes Commission's Report"
Dated at Fort Smith, Ark., November 28, 1896.

* * * * *

The Commission also made public, in like manner after careful consideration, the following notice of mode of procedure, best calculated to secure a just consideration of all claims over which Congress had given them jurisdiction:

VINITA, IND. T., July 8, 1896.

To Whom It May Concern:

The Congress of the United States at its recent session, enacted that the Commission to the Five Civilized Tribes:

(Here the Commission quotes from the provisions of the act of Congress of June 10, 1896 (29 Stat., 339).

Any person desiring that said Commission shall pass upon his claim for citizenship, in any of said tribes, under the

provisions of this act, must make application in writing, signed and sworn to, containing a particular statement of the grounds upon which his claim is based, and accompanied by such evidence, in the form of affidavits, depositions, or record evidence, as he may desire to have considered in support of his claim, all to be forwarded under seal to the Commission, at Vinita, Ind. T., before the 10th day of September, 1896.

The application should state facts sufficient, if true, to show that the applicant is entitled to citizenship. The applicant must, at the same time, furnish the chief or governor of the nation in which citizenship is sought a copy of such application and evidence, and shall furnish to the Commission evidence of that fact. Such chief or governor must, within thirty days thereafter, furnish the Commission with answer thereto, signed and sworn to by some duly authorized officer of his government, and accompanied by such evidence in the form of affidavits, depositions, or record evidence as he may desire the Commission to consider in support of his answer.

All arguments shall be in writing.

HENRY L. DAWES, *Chairman*:
FRANK C. ARMSTRONG,
A. S. McKENNON,
T. B. CABANISS,
A. B. MONTGOMERY,
Commissioners.

The following are excerpts from annual report of the Dawes Commission for the year 1898.

Page 3.

WASHINGTON, D. C., October 3, 1898.

SIR: The Commission to the Five Civilized Tribes submits the following report of the progress of the work under their charge since the report made October 11, 1897. At that time the Commission had just completed the work required of them by statute of June 10, 1896, "to hear and determine the application of all persons who may apply to them for citizenship in any of the said nations, and after said hearing they shall determine the right of such applicant to be so admitted and enrolled. There had been presented to

them some 7,500 different applications under this law, each application, in many cases, embracing others alleged to be of the same family and claiming under the same title, amounting in all to nearly if not quite 75,000 individuals, cases requiring a separate application of the evidence upon which they rested.

Of these applications there were admitted by the commission as follows, viz:

In the Choctaw Nation.....	1,212
In the Chickasaw Nation.....	334
In the Cherokee Nation.....	274
In the Creek Nation.....	255
Total	<hr/> 2,075

The large number of failures to obtain admission to citizenship by the Commission thus shown is attributed in a great measure to the fact that the Commission was required by the statute "in determining such applications to respect all laws of the several nations or tribes not inconsistent with the laws of the United States and all treaties with said nations or tribes, and give full force and effect to the rolls, usages and customs of said nations and tribes." This was right and proper for the reason that for half a century or more the tribal government had been permitted to control the matter of citizenship and had, therefore, legislated upon it and to disregard their laws, usages, and customs at this late hour would be revolutionary and impracticable. The erroneous idea had, however, become prevalent that blood alone constituted a valid claim to citizenship in the several nations, regardless of other qualifications required by treaties and the constitution, laws, and usages of the several nations by which the Commission was to be * * * (page 4). There had grown up, however, grave suspicions as to the integrity of these rolls. Many scandals respecting their manipulation under tribal authority had become very general to be believed by the conservative citizenship of the several nations. The commission had, therefore (in their report of November 18, 1895), felt compelled to call attention to the condition of these rolls. It is not necessary to repeat here the statements then made, which are not believed to have been exaggerated. The work of the commission in adding new names to citizenship had proven so satisfactory

to that class of citizens before named that a desire became general among them that the commission be clothed with authority to also review and reform the existing rolls. This resulted subsequently to that power being conferred on them by Congress. Their workings under this provision will be reported in another connection.

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Page 5.

In the meanwhile, in contemplation of the condition in which the Territory would be left by possible failure to ratify pending agreements, Mr. Curtis, of the Indian committee of the House, addressed himself to the preparation of a bill, the general design of which would be to transfer the control of the property rights in these nations from tribal authority to that of the United States, much the same as their political government had been transferred by the act which was to take effect January 1, 1898. The result of this undertaking of Mr. Curtis, on which he bestowed much time and exhaustive labor, availing himself of all the assistance of others which he could command, has been the act entitled "An act for the protection of the people of the Indian Territory, and for other purposes," known as the "Curtis bill." The knowledge of the preparation of this bill aroused great opposition of those in the Territory opposed to any change in the exclusive use of tribal property by the few controlling the government of the Territory. Accordingly large delegations were sent to Washington, at great expense to their national treasuries, for the purpose of preventing such legislation and procuring, if possible, the repeal of the law taking away so much of their political power, which was to take effect January 1, 1898. It was deemed necessary, therefore, to require the presence of the commission in Washington during the pendency of such legislation to give information to the committees having it in charge as to the real condition of the Territory and the needs and character of the legislation proposed. At the request of these committees, and with the approval of the Department, the commission remained in Washington until the final action upon this bill, rendering such assistance as was in its power to the several committees, based upon accurate and reliable information in relation to the many questions involved in the comprehensive scope of the proposed measure,

well as upon their experience and observation while in Territory. After many changes and modifications, it is believed to have taken the best final shape possible under the circumstances.

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Page 7.

In the prosecution of this larger work of taking the census and perfecting the citizenship roll the commission has found it necessary, in order to insure accuracy and dispatch as well as to relieve as much as possible claimants of unnecessary expense, to go themselves in the country and meet those claiming such enrollment in person, and to determine from their own story under oath and such other evidence deemed necessary the justice of each claim, thereby relieving the applicant as much as possible from the expense and delay attendant upon the employment of counsel to present their claims at particular points and on stated days for hearings. This has made it necessary for the commission to procure outfits and camp equipage required in passing from place to place and in maintaining themselves and clerks in the open country much of the time while conducting the work. The result has fully justified this method. In addition, it has enabled the applicants, more clearly than any other method would, to understand the purpose of the Government in these proceedings, thereby creating a better feeling in this class of Indian citizens toward the Government and its officials. Hitherto they have been kept as far as possible in ignorance of the purposes of the Government in seeking the changes proposed by this commission. It has been for the interest of many influential persons among them, to keep them in the belief that the United States in these negotiations is seeking to wrest from them their heritage. This method of working among them is doing much to dispel this delusion and open their eyes to the real purpose.

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Respectfully submitted for the Commission to the Five Civilized Tribes by

HENRY L. DAWES,
Chairman.

The Honorable Secretary of the Interior."

*Excerpts from the Annual Report of the Dawes Commission
for the Fiscal Year Ending June 30, 1899.*

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Page 10.

ENROLLMENT OF CITIZENS.

A very general impression exists among those unacquainted with conditions in Indian Territory that the work of making rolls of "Indians" is a comparatively simple matter, susceptible of accomplishment in a short space of time. Were Indian Territory merely a reservation peopled only with full-blood Indians, that impression would have foundation in fact, but Indian blood, unfortunately, is not the sole qualification for citizenship in Indian Territory, and, indeed, as will be seen later, if other requisites are not lacking, it is not even an element. In other words, certain arbitrary laws and decisions govern the Commission in determining who are and who are not eligible to enrollment. For example, were a full-blood Cherokee Indian from North Carolina now to present himself for enrollment to the commission, his application would be rejected; whereas, were a white man to now contract marriage with a Choctaw or Chickasaw, conformable to the laws of those nations, he would be entitled to enrollment. When completed the citizenship rolls of the Five Civilized Tribes will be found to contain the names of full-blood Indians, negroes, and white men, with every intervening degree of blood.

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Page 11.

The Act of June 28, 1898 (Appendix No. 1, p. 31) makes it the duty of the commission to prepare ten separate rolls, viz:

- Cherokees by blood, intermarriage, and adoption.
- Cherokee freedmen.
- Delawares (in Cherokee Nation).
- Creek Indians.
- Creek freedmen.
- Seminoles, Indians, and freedmen.
- Choctaws, by blood, intermarriage, and adoption.

Choctaw freedmen.

Chickasaws, by blood, intermarriage, and adoption.

Chickasaw freedmen.

To accomplish this work the commission is authorized "to take a census of each of said tribes or adopt any other means by them deemed necessary to enable them to make such rolls." A further provision of the law makes it incumbent upon the commission to make rolls "descriptive of the persons thereon, so that they may be thereby identified."

Roughly estimated, the number of citizens to be thus enrolled in each nation may be stated as follows:

Cherokees	30,000
Cherokee freedmen.....	4,000
Delawares	1,000
Creeks	10,000
Creek freedmen.....	6,000
Choctaws	16,000
Choctaw freedmen.....	4,250
Chickasaws	6,000
Chickasaw freedmen.....	4,500
Seminoles	3,000

Immediately upon the passage of the Curtis Act the commission made preparations to enter actively upon the duty of making "correct rolls" of citizens. Those commonly termed a "census," the method pursued is not to be compared with the work which properly comes under that term in enumerating the people in the States. A house-to-house visit would be impracticable in the highest degree for the reasons which will appear later. Previous experience of the Commission had demonstrated the impossibility of securing hotel accommodations in the interior of the various nations, even where towns of moderate size had sprung up, and for the commission to secure suitable food and lodging in the more sparsely settled districts and among the full-bloods was not to be thought of. There could be no question, however, as to the desirability, if not the absolute necessity, of the commission visiting well distributed points throughout the interior, as in no other manner could the full-bloods be induced to *present themselves for enrollment*, and any other method would entail too much expense upon the applicants.

The commission, therefore, purchased the necessary equip-

ment for its maintenance in the field, such as tents for office, sleeping, dining, and cooking purposes, kitchen utensils, wagons, and mules for transporting the equipment from place to place, and such supplies as were necessary for the subsistence of the party, and the transaction of business.

Prior to the passage of the Curtis Act the commission had devoted some time to the enrollment of Creeks. The effort, however, was attended with only partial success, owing to the favorable sentiment entertained by full-bloods toward the "blanket policy," and their revulsion of feeling toward a change of conditions, in which they were supported by the principal chief, himself a full-blood. Provisions of the Curtis Act not only required additional information to be secured in connection with each citizen's enrollment, but required a separate roll of Creek freedmen, with additional restrictions. The information already secured in the Creek Nation was, therefore, not sufficient to comply with the law, and the commission found it necessary to include that nation in its plans for enrollment work. Appointments were made and advertised by methods best adapted for the class of people to be reached, covering the Seminole, Creek, and Chickasaw nations, in the order named, and extending to November, 1898.

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Page 13.

CREEKS.

Many more difficulties presented themselves to the commission in the enrollment of Creeks, and their enrollment was not completed at the appointments made. Their enrollment, however, is gradually being effected, as will appear under another head.

Page 18.

LAND OFFICES.

The rules and regulations of the Department, prescribed October 7, 1898, to govern the selection and renting of prospective allotments (Appendix No. 8, p. 81) contain the following provision:

" * * * to give effect to the provisions of said act ac-

cording to its design, and to enable every member of each tribe to select and have set apart to him lands to be allotted to him in amount approximating his share as aforesaid, the Commission to the Five Civilized Tribes is instructed as a means preparatory to and in aid of the duty of allotment of the lands of said tribes, required of it by said act, to proceed as early as practicable to establish an office within the territory of each tribe, provided with proper and suitable records, including a copy of the United States survey of the lands of the tribe, for the purpose of registering each and every selection of lands made by any member of the tribe for his allotment." * * *

It was not deemed by the Commission practicable to attempt the establishment of such offices in all five tribes until a satisfactory method of procedure and system should have been devised and established in one, and by practical experience demonstrated as productive of satisfactory results, and until the rolls of citizens in those tribes should be closed.

The initiatory work being experimental and requiring the close attention of the commission, such office was established at Muskogee, in the Creek Nation, where the general office of the commission is located, thus enabling the commission to better superintend its operations. Due notice was given by publication, as required by the rules of the Secretary, and the office opened for the selection of allotments on April 1, 1899.

As has already been indicated, the full-bloods of the Creek Nation have been slow to accede to the policy of the Government as expressed in recent legislation, and the work of enrolling has been materially retarded by a clear determination on their part to ignore the requirements of the commission. Upon the establishment of a land office at Muskogee, however, it became evident to them that unless they appeared for enrollment they would not be permitted to select their lands, and they have since been presenting themselves for enrollment.

To accomplish the work of enrollment and recording the selections of the Creeks, the commission found it practicable and of material advantage to place an enrolling clerk in the land office. By this method each applicant is examined as to his citizenship before he is permitted to make application for a selection, saving much time to the land office proper. If, on entering the land office, the applicant is found to be

already enrolled on a card, and his citizenship is undoubted, he is at once furnished with a certificate of enrollment. (Exhibit No. 5, p. 60.) If not, the necessary data is secured and enrollment made as described under the head "Enrollment of citizens," the commissioner in charge of the land office passing upon all doubtful claims. * * *

Excerpt from Report of the Commission to the Five Civilized Tribes to the Secretary of the Interior, Fiscal Year Ending June 30, 1900.

* * * * *

Page 10.

"The character of the final allotment necessitates an amount of preliminary work unknown to any other allotment in which the Government has hitherto engaged. It requires the allotment of all the land in the Territory, except such as is reserved for town site and public purposes, to those who shall be determined by specific adjudication to be citizen Indians. The allotment is not to be of an equal number of acres to each allottee, but by equality of value as the value shall be determined by locality, fertility of soil, or any other element affecting values. The work must be so done that, when completed, each allotment will be as near as possible of equal value with every other. It follows that there is no certainty that any two of all the allotments will contain the same number of acres. This equalization of values is attended with great difficulty, and, to be of any value, requires a personal knowledge by the Commission of all that concerns value in every locality of all parts of an area equal to that of the State of Indiana. This allotment is to be to such persons only as shall, by a prescribed method be determined by the commission to be entitled to citizenship. No existing roll is conclusive of such citizenship, but the commission is, under the law, making new rolls of all citizens in its opinion entitled to enrollment. There are believed to be in the aggregate some 70,000 citizen Indian entitled to allotment, but many times that number claim the right. Judicial decisions, many involving difficult legal questions, are required of the commission in each case."

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Excerpts from the Report of the Commission to the Five Civilized Tribes, to the Secretary of the Interior for the Fiscal Year Ending June 30, 1900.

From page 19 of said report.

"In preparing the rolls of citizens of the Creek Nation many difficulties have been encountered. A large element of full-blood Creek Indians have been, and still are to some extent, very much opposed to severing their tribal relations and accepting allotments of land in severalty. From the inception of the work of enrollment, in the fall of 1897, these full-bloods have not only retarded it by their refusal or indisposition to appear before the commission for enrollment, but have used their influence to deter the more conservative Indians from enrolling. It was this same element which caused the commission much trouble and inconvenience in procuring the authenticated tribal rolls of the Creek Nation, which were not secured until after the passage of the Act of Congress, of June 28, 1898, commonly known as the Curtis Act. Before the passage of this act the Commission possessed no legal authority to compel the production of these rolls, and was unable to make a satisfactory enrollment under the then existing conditions.

Under the act of congress of June 10, 1896, and the act amendatory thereof of June 7, 1897, authorizing the commission to make rolls of citizenship of the Five Nations in the Indian Territory, a census was taken, beginning in the fall of 1897, of all citizens of the Creek Nation, freedmen included. The commission, not being in possession of the rolls was compelled to go on with the work without them, and could only rely upon such information as was furnished by the town kings of the several Creek towns, and the applicants or their friends and relatives who appeared before the commission to be listed as citizens. While the census thus taken is not a roll of citizens, and was never intended to be regarded as such, it nevertheless has served its purpose and has been of great assistance in making the rolls.

The act of Congress of June 28, 1898, authorized the commission to secure the Creek Tribal rolls. After many delays, caused by the reluctance of the Creek authorities to deliver them to the commission, the rolls have all been secured from

time to time, with a few exceptions, and are now in possession of the commission. The rolls thus secured consist of the authenticated tribal roll of 1890, the roll of Creek freedmen made under the authority of the United States, prior to March 14, 1867, commonly known as the Dunn roll, the 1891 omitted roll, all of the town pay rolls of 1895, excepting those of Arbekochee, Canadian Colored, Broken Arrow, Ketchapataka, Lochapoka, Nuyaha, Taskegee, Thlewathle, Tuckabatchee, Tulladega, Tullahaschochee and Tulwathlochee towns.

Among the many other difficulties encountered in the enrollment of the Creeks is the identification of persons from the rolls. Many of the full-blood Indians have been known by five or six different names, such as Creek or Euchee name, English names, Busk names (a name given them by the tribal band to which they belong), and possibly a name given them while attending school, while many have also been known by their given names. An actual case illustrates the difficulty of identification. One John Buck appears before the commission for enrollment. A careful search is thereupon made on the rolls for his name, resulting in its not being found. After diligent search for different other names by which he has been known, his name is finally found on the rolls as "co e cath tahny Yah lah pon co conthlany."

Since the commission secured possession of the Creek tribal rolls, coupled with the fact that the opposition heretofore referred to is gradually being overcome, and that the more radical Indians are beginning to realize that it is to their best interest to be enrolled, the work of making the rolls of citizenship is satisfactorily and gradually nearing completion.

From Page 21 of said Report.

A very difficult problem to determine is the actual number of recognized citizens in the Creek Nation who are entitled to be enrolled as such, as there is no satisfactory enumeration. The commission took a census of the nation in 1897 and 1898, but as a large number of Indians refused to appear before the Commission and furnish any information concerning themselves or their neighbors, the census then taken was neither complete nor satisfactory. By reference to Table (p. 20), it will be seen that the total number of names on the rolls of 1890 and 1891 is 14,795, while the number

names on the 1895 roll is only 13,689, showing a reduction of 926 names in a period of four and five years. This reduction is accounted for from the fact that the Creek authorities discovered that a large number of names had been fraudulently placed on the rolls for a pecuniary consideration, and that the names of many deceased persons had been left thereon in order that interested parties might participate in the per capita payments. Upon the discovery of this fact in 1895, the Creek council created a special committee, commonly known as the "Committee of Eighteen," which was given full power to revise the rolls, and eliminate therefrom the names of all deceased persons and all persons who had been placed thereon fraudulently. Pursuant to the authority thus conferred, this committee erased a large number of names of noncitizens and deceased persons from the rolls. By an act of Creek council of May 30, 1895, a citizenship commission was created, whose duty it was to sit as a high court to settle and determine all cases brought before it, involving the right of citizenship in the Creek Nation. This commission was given further authority by an act of the Creek council, approved August 10, 1896, to examine the census rolls of 1895, and satisfy itself of their correctness, and correct them by erasure of noncitizens and deceased persons and by the addition of children, and submit the rolls so amended to the council for its approval. The rolls so amended were submitted to and approved by the Creek council in 1896, and are the last authenticated rolls of Creek citizens. In view of this fact and the further fact that a large number of those unaccounted for on the 1895 rolls are undoubtedly either non-citizens or dead, it is estimated that the total number of recognized Creek citizens will not exceed the total number of names appearing on these rolls.

From Page 22 of said Report.

The total number of Creek Indians enrolled to date is 6,060. Of this number 147 were born since the 1st day of July, 1899, and 14 are classed as doubtful. The enrollment of these children has been made for the reason that no date has been determined for closing the rolls. The Creek Agreement of February 1, 1899, which was not ratified by Congress, provided that: "No person born to any citizen after June 30, 1899, shall be entitled to enrollment." The agree-

ment of March 8, 1900, now pending for ratification, extended the time to July 1, 1900. There being no existing law or agreement designating the date for closing the rolls, this enrollment is being continued.

Excerpts from Annual Report of "Five Civilized Tribes for the Fiscal Year Ending June 30, 1901.

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Page 30.

Allotment of Lands—Creek Nation.

Since the opening of the Creek allotment office in April, 1899, 10,617 persons have appeared before the Commission and made application to select allotments. Of this number 9,557 have received a preliminary allotment of 130 acres, and 1,060 have made partial selections. The selections made up to and including June 30, 1901, cover an acreage of 1,626,917 acres. A comparison of the allotment of lands with the classification made by the commissioner's appraisers in the field shows that ninety-five per cent of the land selected has been distributed in the various classes which donates agricultural land.

In the commencement of the so-called "Snake uprising" over 200 selection certificates issued by the Commission were returned to this office, no explanation being given save that occasionally a statement was made that the land was not desired. A large number of these certificates were returned to the commission by the United States marshal for the northern district, who secured them upon the arrest of the leader of this faction, and these certificates have been again mailed to the allottees.

During the appointment of the Commission at Okmulgee during the month of May, referred to under the head of "Enrollment of Creek citizens," the allotment office for that tribe was maintained at the same point in conjunction with the allotment office at Muskogee, the two offices being connected by telephone, of which constant use was made during the day. More than 800 applicants for allotment were received during this appointment, and the physical resources of the clerical force of the Commission at that point were taxed to their utmost to dispose of the work devolving upon

it. Most of these applications were those of full-blood Creek Indians, for whom interpreters were required.

Unusual activity in the matter of selecting allotments was displayed during the month of June when the discovery of petroleum was made near the town of Red Fork, in the Creek Nation. For the most part these applications for allotment in this vicinity were stimulated by the action of speculators, who desired to secure leases from the citizens who might secure the lands in that vicinity in allotment. The Commission exercised all possible care to see that the best interests of the Creek citizens were subserved.

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Excerpts from Reports of the Commission to the Five Civilized Tribes to the Secretary of the Interior, for Fiscal Year Ending June 30, 1902.

Page 13.

* * * * *

There has never been maintained by the tribes any strictly authentic rolls of citizenship of the Choctaw and Chickasaw Nations, and the 1896 citizenship rolls of these two tribes, which have been used as a basis in the preparation of the final rolls of the two nations, present many inaccuracies. In numerous instances names of persons appearing thereon were placed there by fraud or without authority of law.

Considerable time and labor have been expended during the last fiscal year in ascertaining the exact status of persons whose names appear upon such rolls and determining whether they are entitled to enrollment by this Commission under the provisions of the twenty-first section of the Act of Congress of June 28, 1898 (30 Stat. L., 495).

The Commission was not aware at the inception of the enrollment of the citizens of these two tribes of the extent of inaccuracies and the irregularities that existed in the tribal rolls which were used as a basis for enrollment by the Commission, and accordingly during the first two years of the progress of this work numerous persons whose citizenship was later to prove questionable applied to the Commission, were identified from the tribal rolls, and regularly listed for enrollment.

* * * * *

Early in the present calendar year a number of prominent Cherokees of wide acquaintance in each district in the Cherokee Nation were summoned before the Commission at Muskogee, and with them the tribal rolls were carefully checked, and as far as possible the names of the dead were stricken from said rolls. Many names were in this way eliminated from the list of unenrolled, but there still remained on April 1, 1902, unaccounted for on the Cherokee census roll of 1896, which was used as a basis, 5,439 names.

The Keetoowah organization, embracing in its membership practically all of the unenrolled full bloods, strenuously opposed by every means in its power the making of rolls of citizens; and in February, the United States court for the northern district of Indian Territory, was applied to for an order directing certain leaders of said society to appear at Muskogee, Ind. T., on the 29th day of February, 1902, and have themselves and families enrolled. At later dates other influential full bloods who had been opposing enrollment were also brought to Muskogee by court process.

In every instance when faced with the alternative of enrollment or imprisonment the parties summoned elected to enroll, though a few suffered confinement for a brief period before acquiescing. It was hoped that the enrollment of these leaders would materially assist the work of the parties sent to the field.

* * * * *

Births and Deaths.

In the matter of ascertaining and recording the deaths that have occurred since the enrollment of Cherokee citizens began, but little progress has been made, owing to the great difficulty experienced in obtaining affidavits of reliable persons.

During the year many affidavits as to the births of children whose parents were previously listed for enrollment have been received.

Approximately 1,400 birth affidavits were filed with the Commission and the children listed for enrollment as follows:

On regular Cherokee cards.....	1,159	
On doubtful Cherokee cards.....	92	
On rejected Cherokee cards.....	1	
On regular Delaware cards.....	31	
On doubtful Delaware cards.....	4	
	<hr/>	1,287
On regular freedmen cards.....	64	
On doubtful freedmen cards.....	49	
On rejected freedmen cards.....	2	
	<hr/>	115
Total		<hr/> 1,402

Summarized Statement of Applications.

The number of applications heard since the enrollment of Cherokee citizens was begun is 14,750, embracing 43,425 applicants. These applicants have been classified as follows:

On Regular Cards.

Full-blood Cherokees	6,459	
Full-blood Shawnees	212	
Full-blood Delawares	342	
Mixed-blood Cherokees	21,159	
Mixed-blood Shawnees	608	
Mixed-blood Delawares	694	
Intermarried whites (both sexes).....	2,037	
	<hr/>	31,511

On Doubtful Cards.

Full-blood Cherokees	111	
Full-blood Shawnees	14	
Full-blood Delawares	13	
Mixed-blood Cherokees	2,360	
Mixed-blood Shawnees	146	
Mixed-blood Delawares	30	
Intermarried whites (both sexes).....	630	
	<hr/>	3,304

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CREEKS.

During the fiscal year ending June 30, 1902, the work incident to the enrollment of Creeks has been mainly confined to securing a more complete identification of a large number of citizens who were listed for enrollment by the Commission in 1897 and 1898, while there was yet lacking that full authority and means for procedure which later legislation conferred and prescribed; to considering enrollment and memoranda cases and preparing and rendering decisions therein; to securing the necessary information to bring the work of the Creek enrollment within the provisions of sections 28 and 29 of the act of Congress of March 1, 1901 (31 Stat. L., 861), with respect to who of those citizens enrolled prior to April 1, 1899, were living on that date, and whether children born prior to July 1, 1900, were then living; to preparing partial rolls of citizenship for review by the Secretary of the Interior, and to issuing certificates of enrollment for persons who desired to make application for their individual allotments of land, or for persons whom they represented, and for persons to whom the Commission has made arbitrary allotments.

The act of Congress of March 1, 1901 (31 Stat. L., 861), which was ratified by the Creek National Council, May 25, 1901, provides for the enrollment of all citizens of said nation entitled to be enrolled under section 21 of the act of Congress of June 28, 1898 (30 Stat. L., 495), who were living on the first day of April, 1899, and for the enrollment of all children born to citizens so entitled to enrollment, up to and including July 1, 1900, and then living. Said act of Congress also provides that no person whomsoever shall be added to the rolls after the date of its ratification.

It therefore became necessary to determine who of these children were living on April 1, 1899, and who of said children born subsequent to that date were living on July 1, 1900. Many of the Creek officials rendered valuable assistance in the prosecution of this work, and very satisfactory progress was made. As a number of the kings and warriors refused to give any information or render any assistance, a field party was organized and sent into the full-blood settlements for the purpose of securing all information possible

regarding the enrollment of these citizens. During the months of August, September, and October, 1901, this party had appointments at Eufaula, Proctor, Wetumka, Holdenville, Morse, Okmulgee, Senora, and Checotah. At Eufaula, Proctor, Morse and Senora considerable opposition was made by the full-bloods to the prosecution of the work. Notwithstanding this opposition, all of the known Creek citizens for whom additional information was required residing in the localities visited by this party were fully identified or accounted for otherwise.

The following is a statement showing the work accomplished by this party:

Number of citizens identified and found to be entitled to enrollment	1,124
Number of citizens found to have died prior to April 1, 1898	352
Number of persons found to be residing outside of Creek Na.	102
Total number of persons accounted for.	1,578

In addition to the above work this party secured 268 proofs of death of citizens who died subsequent to April 1, 1899, and who were listed for enrollment on regular cards, 53 birth affidavits, and 76 supplemental proof for children born between April 1, 1899, and July 1, 1900.

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Page 41.

ALLOTMENT OF LAND.

CREEK NATION.

The allotment of land in the Creek Nation was commenced on April 1, 1899, a preliminary allotment of 160 acres being given alike to Creek Indians and Creek freedmen. This work was instituted under the act of Congress of June 28, 1898 (30 Stat. L., 495), and was constituted under the Creek agreement approved by the act of Congress of March 1, 1901 (31 Stat. L., 861), which latter legislation confirmed allotments previously made and, in terms, authorized a continuance on the lines adopted by the Commission.

Out of the total acreage of 3,172,813.16 acres there has now been allotted 2,177,262.44 acres; 550,345 acres of this amount were allotted during the fiscal year ending June 30, 1902, or practically 1,800 acres a day.

A total of 13,144 complete allotments, of 160 acres each have been made; 1,331 of these were arbitrary allotments made by the Commission for those who persistently refused or neglected to act for themselves, and the remainder were selected by the allottees or their recognized representatives. Partial allotments have been made to an additional 728 persons, and while the exact number of citizens is yet to be determined, it is not believed there remain more than 1,350 allotments to be made out of a total of 14,500.

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Excerpts from the Report of the Commission to the Five Civilized Tribes to the Secretary of the Interior for the Fiscal Year Ending June 30, 1903.

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Page 7.

The object of Congress from the beginning has been the dissolution of the tribal governments, the extinguishment of the communal or tribal title to the land, the vesting of possession and title in severalty among the citizens of the tribes and the assimilation of the peoples and institutions of this Territory to our prevailing American standard.

It was evident at the end of the first five years that the accomplishment of the foregoing object by negotiation alone was practically impossible. The Indians (so called, for most of them by a century and a quarter of intermarriage have far more Saxon than Indian blood) would never surrender by consent what they did not want to give up at all. The Commission, as then constituted, was able to bring to the discussion neither inducements nor force. Some of the tribal members held passionately to their institutions from custom and patriotism, and others held with equal tenacity because of the advantages and privileges they enjoyed. It was almost worth a man's life at that time to advocate a change.

Under these conditions Congress was, in 1898, fairly confronted with the alternative of either abandoning its policy and abolishing the Commission, or else of converting the

Commission from merely a negotiating body into also an executive and semi-judicial body, and of proceeding with the work under the constitutional power of Congress, and largely, at least, regardless of the will of the tribes.

A strenuous effort was made to prevent the adoption of the latter course. So pronounced was the opposition and so severe were the criticisms heaped upon the Commission that at one time there seemed to be no doubt of success for those who favored this policy. But in what may be deemed a fortunate hour it was decided not to act without giving a chance to the special representatives of the Government to be heard, both in their own defense and with respect to what course should be adopted. This led to such a revelation of slander, corruption and oppression that Congress immediately passed the Curtis act, and it has been followed by prompt appropriations for its execution, amounting now to nearly \$1,000,000.

That act undertook not to let anybody and everybody come forward and take public land, but to administer upon five great estates, aggregating 20,000,000 acres. It ordered these estates to be partitioned among the individual heirs upon the principle of equal value, and it could hardly have done less, and at our expense, under the stipulations of treaties.

Nor was it a disposition of wild land, or of lands of uniform value. It related to vast tracts covered by the homes and other improvements of a great population, threaded in every direction with railroads, filled with villages and large towns of the most modern character, and without a wigwam or a blanket Indian within the limits of the Territory.

It was a vast and difficult undertaking, and no previous disposition of either lands or tribes afforded precedents for guidance.

Manifestly two indispensable duties lay at the very beginning of the business.

First, to determine who were the *bona fide* citizens or heirs entitled to inherit these properties; and second, to take an inventory of the properties to be divided.

When these two tasks had been performed as to any tribe, then only was it possible to begin the intelligent and equitable division of its estate. There was practically nothing to go upon in either instance, and the whole work had to be done from the beginning.

In determining the heirs, the Commission has heard and passed upon the individual applications of more than 200,000 claimants; and of this number some 128,000 have been so disposed of since the passage of the Curtis act. All of these cases had to be made matters of record, many of them involving hundreds and some of them thousands of pages of evidence and pleading; and of the total number more than half have been rejected as not entitled to share in the properties of the tribes.

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Page 10.

Enrollment of Citizens.

* * * * *

By the agreements consummated during the fiscal year ending June 30, 1903, the time within which the Commission might receive applications for enrollment as citizens of the Choctaw, Chickasaw and Cherokee Nations is defined, and only in the Creek Nation are applications for enrollment still being received.

Since the work of enrollment was commenced (excluding applications for citizenship adjudicated under the act of Congress approved June 10, 1895) applications for the enrollment of 128,406 persons have been made to the Commission. The general classification of these applicants is as follows:

Seminoles	3,079
Choctaw (Miss. Choctaws included) ..	50,740
Creeks	15,257
Chickasaws	13,176
Cherokees	46,154
<hr/>	
Total	128,406

Excerpts from Reports of the Commission to the Five Civilized Tribes to the Secretary of the Interior for Fiscal Year Ending June 30, 1904.

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"How were the lists or rolls of membership to be got? The tribal rolls already in existence were most of them old, and besides they were so honeycombed with fraud that the whole question was ordered by Congress to be gone over and determined anew. Had written applications been allowed, and personal appearance and examination dispensed with, the labor of the task would have been greater than it has been and frauds would have been greater than ever.

As it was, every adult or head of a family in a total of more than 200,000 citizens and claimants was personally examined and his previous tribal record was looked up. Of this number, and in this way, more than 120,000 have been examined since June 28, 1898. The proceedings were all taken down, especially as every case could be carried to Washington on appeal, and often the record of a single case was hundreds of pages in extent. Of the above number of people, approximately 50,000 will be finally adjudged to lawfully possess tribal membership and property rights; and it can readily be seen how a less careful course of procedure would have utterly dissipated the properties of the tribes."

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Page 11.

Enrollment of Citizens.

No original applications for enrollment were received by the Commission during the past year, save the Creek Nation, the citizenship rolls of the other tribes having been finally closed by the respective agreements. This branch of the work has, therefore, consisted mainly in the disposition of pending applications and the preparation of schedules, or partial rolls, containing the names of persons found to be entitled to enrollment.

In the Seminole Nation the work of enrollment has long been completed. The following table indicates the general condition of enrollment work in the other four tribes:

Tribes.	Applicants.	Enrolled.	Denied.	Undetermined.
Creek	16,948	15,359	547	1,042
Cherokee	46,418	35,450	1,568	9,400
Choctaw and Chickasaw....	60,619	33,220	21,832	5,567
Total.....	123,985	83,999	23,947	16,009
* * *	*	*	*	*

Page 23.

Births and Deaths.

During the year there have been filed 61 affidavits of birth and 77 death affidavits as to persons who, it is claimed, are entitled to enrollment. At the close of the year there are pending 118 affidavits of birth and 103 death affidavits, to dispose of which applications further evidence is necessary. Experience has shown that the statements of the affiants cannot be relied upon and the testimony of two or more competent witnesses is required in each case. Supplemental proofs in the matter of the enrollment of 10 children born to Creek citizens subsequent to the date of the last authenticated Creek tribal roll have been filed, in which cases affidavits of birth had previously been filed, but the Commission was not satisfied as to their right to enrollment. These cases have received careful attention, and were disposed of as the facts warranted.

Affidavits have been received evidencing the death of 111 persons regularly enrolled as citizens of the Creek Nation and for whom allotments were selected during their lifetime. These affidavits were for use of the Creek land office in making allotments to the heirs of said deceased persons.

Final Roll.

There were reported to the Department for approval during the past fiscal year the names of 282 Creek citizens by blood and 519 Creek freedmen who had been regularly listed for enrollment by the Commission, and whose enrollment as such was approved by the Secretary of the Interior.

The names of 19 persons, 12 Creeks by blood and 7 freedmen, heretofore enrolled as citizens of the Creek Nation, and their enrollment as such approved by the Department, have

been canceled from the final roll by departmental authority, evidence having been submitted to the Commission and report made to the Department showing that they were not entitled to have their names appear thereon or were duplicated on the roll under other names.

The following table indicates the status of enrollment work in the Creek Nation:

	Applicants.	Enrolled.	Denied.	Pending.
Creeks by blood.....	10,994	9,893	380	661
Creek freedmen	5,954	5,466	167	381
Total.....	16,948	15,359	547	1,042

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CHEROKEES.

No original applications for enrollment as citizens or freedmen of the Cherokee Nation have been received since October 31, 1902. Perhaps greater difficulty has been experienced in the preparation of the final rolls of the Cherokees than in any other tribe. The rights of intermarried whites and freedman have been the subject of protracted litigation. As a result the Commission has much of the time been powerless to proceed with the enrollment of these classes of citizens, and even now the rights of the intermarried citizens are being contested in the Court of Claims, so that nothing can be done by the Commission as to their enrollment.

The injunction of the United States Court against the enrollment of a certain class of Cherokee freedmen, mentioned in the Commission's tenth annual report (Appendix No. 6, p. 142), was dissolved on August 25, 1903, and no appeal having been taken, the work of deciding cases which had been suspended by reason of the injunction proceedings was immediately taken up.

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CHOCTAW AND CHICKASAW NATIONS.

Toward the close of the year it appeared that a number of persons whose enrollment had been approved by the Secre-

tary of the Interior for a period of more than twelve months had not presented themselves at the land offices for the purpose of selecting their allotments. Acting under authority granted by the provision of law quoted, the Commission notified such citizens that unless they made selection of their allotment within thirty days from the date of such notice land would be arbitrarily allotted to them by the Commission. At the same time two parties were placed in the field for the purpose of locating the improvements owned by this class of citizens in order that the Commission, in designating their allotments, might include therein the land upon which they owned improvements.

Page 43.

WASHINGTON, September 30, 1903.

The Secretary of the Interior.

SIR: I am in receipt, by reference of the Acting Secretary, September 9, 1903, of the letter of the Commissioner of Indian Affairs of September 5, 1903 (Land, 4798-1903), transmitting a communication from the chairman of the Commission to the Five Civilized Tribes, dated August 28, 1903, and resolutions that day adopted by them relative to selections of allotments by full-blood Indians of the Choctaw and Chickasaw Nations, with request for my opinion "whether said resolutions should be approved as they stand or modified; and if so, in what particular, or what action the Department should take in the premises."

The resolutions and preamble thereto are as follows:

"Whereas it has come to the knowledge of the Commission that certain full-blood Indians have been taken to the land offices in the Choctaw and Chickasaw Nations by agents and speculators, where selections were made by such Indians of their allotments; and

"Whereas it is reported that such Indians have entered into contract with such agents and speculators for the lease of the lands so selected at unreasonable prices; and

"Whereas notices have been served upon divers parties to show cause at times fixed in said notices why certain selections of allotments in the Chickasaw Na-

tion, where such selections are in separate tracts, widely separated, should not be canceled and set aside; therefore,

"Resolved, That until further ordered no allotments shall be made to full-blood Indians taken to the Choctaw or Chickasaw offices by agents or non-citizens.

"Resolved, That all selections where the land selected is divided into different tracts, rendering such selections less valuable or desiring than otherwise, be canceled after due notice unless the person making such selection show good cause why the same should not be done.

"Resolved, That no selection of allotment be permitted where it is disclosed that contracts have been made for the lease thereof or the sale of any interest therein, and that the Commission cancel all selections made by full-blood ignorant or indigent Choctaws where contracts have been made of any kind affecting the title of the lands so selected before or after selection, previous to the issuance of a certificate of allotment, and all other selections made by said full-blood ignorant or indigent Indians which, upon examination, are found not to be in the interest of said Indians."

The Commission say the proposed modification in the manner of making allotments meets the objections presented by counsel for the Indian nations, and provides reforms deemed by the Commission to be for the best interests of this class of citizens, but the Commission expresses doubt as to its authority to exercise the powers proposed to be assumed under the last resolution and will not, for that reason, take action thereunder until advised of its approval.

The Indian Office expresses no opinion at length upon the first resolution, but gives its reasons for the opinion that the second one violates the rights accorded to individuals by the agreement and statute providing for allotments of land to the Indians in severalty, and that no authority of law exists for exercise of the power to be assumed under the last one, and recommends that none of the resolutions be approved.

The clear intentment of the agreement between the Choctaw and Chickasaw Nations and the United States, ratified by the act of July 1, 1902 (32 Stat., 641), is that the indi-

vidual entitled to allotment may select for himself and take any lands subject to allotment. By section 6 the word "select" is defined as "the formal application * * * for particular tracts of land." Section 12 provides that "each member of said tribes shall, at the time of the selection of his allotment, designate as a homestead," etc. Section 17 makes express provision for selection by the Commission, "if for any reason an allotment should not be selected" by or on behalf of the person entitled; and section 21 provides for selection of the allotment due a deceased person, to be made by the executor or administrator, and, in case of his default, then by the Commission. These provisions necessarily imply that the individual entitled to an allotment is entitled to select the land, subject to the other conditions that selection must be made of allotable land and in subdivisions of not less than ten acres or a "quarter of a quarter of a quarter of a section." The law does not require that selections or allotments shall be made of contiguous tracts or so as to form a compact body of land. No such restriction upon the right of selection having been imposed by the law, I am of the opinion that the allottee is free to make his selection of non-contiguous tracts and that the second resolution is unauthorized and should not be approved. The law having given the allottee the right of selection, his judgment of what is most valuable, desirable, or advantageous to him is not subject to review or control by the Commission or allotting authority.

The duty of the Commission no doubt is, so far as it can, to protect the Indian, who is to some extent its ward, from imposition and undue influence by designing and evil-minded persons. When it has reason to suspect that the applicant is acting under such influence, it may in any particular case take such measures as will enable the applicant to exercise his own free choice, such as to require the suspected person, "agent, or non-citizen" to withdraw, or by calling in some known and intelligent, trustworthy citizen or other person known to the applicant and capable of conversing with him in his own language, to confer with, advise, and aid the allottee. No formal resolution or rule is necessary to confer such authority. It is the nature of things inherent in all courts, quasi-judicial bodies, or executive officers when called upon to act in respect to the rights of persons of weak intelligence or will, or where such conditions are merely suspected to exist.

The objections to the second of these proposed resolutions

or rules for procedure necessarily involves the rejection of the third. It is objectionable for other reasons. When a selection has been made rights presumably vest. When such selection is approved and the allotment is made, the equitable right becomes apparently complete. No power is expressly vested in the Commission or in the Indian Office, of its own motion, to review such action. Whether it may do so at the instance of the allottee and after notice to all others claiming to have acquired rights under him is not presented by the papers before me, and no opinion need be expressed. But it would seem that, prior to vesting of legal title in the allottee by delivery of the allotment deed, the powers of the Indian Office and Commission are analogous and similar to those of the Land Department prior to issue of patent to public lands.

I am of the opinion that the second and third resolutions should not be approved in their present form or in any modified one having substantially the same object, and that the Commission already has all the power that approval of the first resolution could confer, so that no action of the Department in the premises is necessary.

It may be deemed necessary to prescribe regulations in respect of these matters for the guidance and control of clerks in charge of land offices. If so, they should be prepared in accordance with the views suggested herein and submitted for the consideration of the Department.

Very respectfully,

F. L. CAMPBELL.
Assistant Attorney General.

Approved September 30, 1903.

THOS. RYAN,
Acting Secretary.

Excerpt from Report of the Commission to the Five Civilized Tribes, Dated at Muskogee, Ind. T., June 30, 1905.

Page 8.

ENROLLMENT OF CITIZENS.

The work of enrolling the members of the Five Civilized Tribes in Indian Territory may be classed under three general heads:

First, the reception of applications for enrollment.

Second, the determination of the rights of the applicants.

Third, the actual placing of the names of those entitled to be enrolled upon the final rolls for approval by the Secretary of the Interior.

The first has occupied a space of nearly nine years, the work having been commenced under the act of June 10, 1896, and ended June 2, 1905, with the expiration of the time allowed for the enrollment of Seminole children by the act of March 3, 1905. Obviously the completion of the work assigned to the Commission was an impossibility so long as the rolls were kept open by law and names were being constantly added to them. It is believed that since the reception of applications was commenced ample opportunity has been afforded every person who has any claim to citizenship in Indian Territory to lay his case before the Commission. The Commission's enrollment parties have visited every part of the Indian Territory, carrying its voluminous records and its extensive camping paraphernalia into regions rarely if ever before visited by the white man. More than one hundred thousand citizenship claims have been presented to the Commission, and volumes of testimony and evidence have been submitted in connection with them. It has required an elaborate system of records and indexes to keep track of these numerous applications, and the constant correspondence in connection therewith has reached into hundreds of thousands of letters.

In the second procedure it is necessary to have the services of law clerks who are familiar not only with the United States laws governing the enrollment of these Indians, but with their own tribal laws and customs under which citizenship rights were acquired and lost. Where applicants are shown by the tribal records to be beyond question *bona fide* citizens of the respective tribes, the determination of their right to final enrollment is a simple matter. But many persons were manifestly entitled to be enrolled whose citizenship status was not a matter of record with the tribes, and many others were named upon the tribal rolls who were in nowise entitled to share in the distribution of their common property.

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Page 9.

the Indian languages recognize no such thing as gender. full-blood invariably speaks of his wife as "he," and pertinently names his daughters "Willie," "Joseph," "David," the like. Strapping youths with no outward mark of manhood sometimes answer to such remarkable names as "William," "Pearl," or "Josephine." Surnames are changed at night. "Brown" today will solemnly swear that he is "Green" tomorrow, while "Care-co-con-thla Big Mosquite," armed with a desire for an English name, becomes, without ceremony, plain "John Smith." In some cases two or more children of the same parents are given identically the same name. Information as to the age of both minors and adults is often unreliable, if not absolutely lacking.

Under such conditions it is not to be expected that absolute accuracy could be attained, and it is hoped that such errors as creep into the rolls will not be regarded by the Department as indicating carelessness on the part of the Commission or its employees engaged in the preparation of citizenship rolls.

The methods employed in the enrollment of citizens have been explained to the Department in previous reports, and the following pages are intended only to portray the status of the work in the respective tribes at the close of the last fiscal year.

The general condition of the work may be briefly summed up in the following table:

Applicants.	Enrolled of identified.	Refused of dismissed.	Unde- termined.
Choctaw and			
Chickasaw . . .	66,217	35,638	27,719
Cherokee	46,464	35,394	4,639
Chick	20,110	15,513	1,157
Chinole	3,171	2,750	7
Total . . .	135,962	89,295	33,522
			13,155

In the above table the applicants whose rights have been passed upon by the Commission and are pending before the Department and those whose enrollment is suspended for various reasons are classed as undetermined.

* * * * *

CREEKS.

For a long time the completion of the final rolls of the Creek tribe of Indians was contingent upon the fixing of a date after which no one should be permitted to make application for enrollment. Indeed the whole work of the Commission with respect to the affairs of the Creeks was practically at a standstill on this account. Section 28, of the Creek agreement, approved by Congress March 1, 1901, to-wit:

"No person, except as herein provided, shall be added to the rolls of citizenship of said tribe after the date of this agreement, and no person whomsoever shall be added to said rolls after the ratification of this agreement * * *"

having failed in its purpose, the closing of the rolls rested with the Secretary of the Interior, as provided in the following language found in the act of March 3, 1901:

"The rolls made by the Commission to the Five Civilized Tribes, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, shall alone constitute the several tribes which they represent; and the Secretary of the Interior is authorized and directed to fix a time by agreement with said tribes or either of them for closing said rolls, but upon failure or refusal of said tribes or any of them to agree thereto, then the Secretary of the Interior shall fix a time for closing said rolls, after which no name shall be added thereto."

It was apparent that so long as the reception of applications for enrollment was continued persons not entitled to be enrolled would endeavor by fraudulent means to have their names placed upon the rolls in order to avail themselves of the property rights which would thus accrue to them.

It appears from a report of the Acting Commissioner of Indian Affairs, dated June 8, 1904, transmitting copy of your telegram, dated June 6, that the Muskogee or Creek Nation has failed or refused to make an agreement providing for the closing of the rolls of said nation, as provided in

act. It is therefore ordered that September 1, 1904, be the same is hereby, fixed as the time when the rolls of Muskogee or Creek Nation, being prepared by you, shall be closed, and that after said date the application of no person whatsoever for enrollment as a citizen or freedman of Muskogee or Creek Nation will be received by your Commission.

E. A. HITCHCOCK, *Secretary*.
L. R. S.

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At the time this order was issued there were upon the previous tribal rolls of the Creek Nation something over 4,000 names which had never been accounted for. The Commission has every reason to believe that few, if any, of these names ought to be placed upon the final roll of Creek citizens. Many were dead, some were fictitious names fraudulently placed upon the pay rolls, and others were already enrolled under different names. Still the Commission pursued, as elsewhere, its policy of using every possible precaution to prevent any member of the tribe from sleeping upon his rights or losing his interest in the tribal property, either through negligence or a determination to resist the changes being made in the status of the tribe.

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Public notice of the final closing of the rolls was given, and a list, containing every name which appeared upon any previous roll and had not been accounted for, was published and distributed broadcast throughout the country. A party was also sent into the field to visit the communities inhabited by the full-bloods—not merely that they might be given an opportunity to apply for enrollment, but rather to seek out those who had failed or refused to make such application and obtain the information essential to their enrollment. As was anticipated, the principal result of the Commission's effort in this direction was to entail upon it a great amount of work. Many persons bearing names similar to those which appeared upon the advertised list presented themselves before the Commission, claiming to be "lost Creeks," and made application for enrollment. In most cases the applicants

had not a vestige of right to enrollment, but the Commission could well afford to take the trouble of adjudicating these groundless claims rather than deprive any citizen or freedman of his interest in the tribal property by failing to offer every opportunity for enrollment.

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On June 30, 1905, the final enrollment of citizens of the Cherokee Nation has been approved as follows:

Cherokees by blood, not including 1,143 citizens by intermarriage whose enrollment was approved but subsequently suspended.....	31,283
Cherokee freedmen	3,923
Registered Delawares	196
Total.....	35,402

Report for the Year Ending June 30, 1906.

Page 12.

Enrollment of Citizens.

After the enactment of the legislation of 1893 it became apparent that the rolls of citizenship of the several tribes as prepared by the tribal authorities were inaccurate and could not be used as a basis upon which to make distribution of the tribal property. It was admitted by the tribal authorities that such rolls contained the names of a number of persons who had been placed thereon by fraud or without authority of law, while the payment rolls contained the names of many persons who in reality never existed.

Under the act of June 28, 1898, the work assumed an entirely new phase. By this act in 1880 authenticated roll of the citizens of the Cherokee Nation was made the basis of enrollment in that tribe, and the Commission was directed to make correct rolls of the citizens by blood of the other tribes, striking from the tribal rolls such names as were placed thereon by fraud or without authority of law; enrolling only

those who were lawfully entitled to enrollment and their descendants born since the rolls were made, together with such intermarried white persons as might be entitled to citizenship in the Choctaw and Chickasaw tribes.

Said act also made provision for the enrollment of Choctaw and Chickasaw freedmen and established the basis of such enrollment. It also authorized the identification of persons claiming rights in the Choctaw lands under the provisions of the fourteenth article of the Choctaw treaty of September 27, 1830.

Field parties were sent into every part of the Territory for this purpose. Each party consisted of a number of clerks and stenographers and carried its camp equipment composed of tents, wagons, cooking utensils, etc. Each camp had to have its teamster and its cook, and, in addition to the camping outfit, it was necessary to carry many records and office supplies, as well as a certain amount of office furniture. It was the endeavor of the Commission to have one of the commissioners with each enrollment party at all times.

Each applicant who appeared before the Commission, either at the general office or its field appointments, was placed under oath and carefully examined as to himself and the members of his family, a card being prepared from his statements containing in brief the family record and the names of the persons for whom he made application. In the majority of these cases a stenographic record was made and preserved.

While each card had a corresponding jacket in which the testimony, documentary evidence, and correspondence relating to the case was filed, the card itself, being more convenient for quick reference, was made to contain as complete a history of the family as possible. Each change in the status of an applicant was entered upon his card, such as the date and nature of the Commission's decision, the placing of each name upon the final roll, the approval of such roll by the Secretary of the Interior, a change in post-office address, the date of marriage or death of an applicant, whenever the same came to the knowledge of the Commission, and other information essential to the determination of the applicant's rights to enrollment. So complete are these cards that certified copies of them are much sought after by those interested in land transfers in the Territory,

and they are generally regarded as authority on matters of family relationship. An accurate index to each card and jacket had to be kept, the names of the applicants being entered alphabetically upon the index with the number of the card and jacket opposite.

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Page 37.

ELIMINATION OF NAMES FROM FINAL ROLL.

In spite of the pains taken by the commission to make the final rolls accurate from the start a number of names were placed thereon which should have been omitted, because the person died prior to September 25, 1902, and were not entitled to final enrollment. These frauds did not develop to any great extent until the work of allotment was commenced. Then it was discovered that the names of many Choctaws and Chickasaws who died prior to September 25, 1902, were included in the final roll.

In order to secure evidence showing the date of death of such persons it was necessary, to send employees into the field, and parties were sent out in both the Choctaw and Chickasaw nations. For many months employees, traveling in an open buckboard, have scoured the country in search of information as to persons erroneously enrolled. In some cases it has been difficult to obtain accurate information, but the work performed along these lines has been generally satisfactory and effective. Evidence has been obtained which led to the cancellation of 1,447 names from the final roll, as follows:

Choctaws by blood.....	1,023
Choctaw freedmen	22
Chickasaws by blood.....	231
Chickasaw freedmen	166
Choctaw new born (act of March 3, 1905).....	2
Chickasaw new born (act of March 3, 1905).....	1
Mississippi Choctaws	2
Total.....	1,447

There are now under investigation 121 cases where information has been received tending to show that persons died prior to September 25, 1902.

The following table shows the status of the final rolls of Choctaws and Chickasaws June 30, 1906, taking into account all additions and eliminations:

Choctaws by blood	15,023
Choctaws by intermarriage.....	1,550
Choctaw new born (act of March 3, 1905).....	1,556
Chickasaws by blood	4,760
Chickasaws by intermarriage.....	623
Chickasaw new born (act of March 3, 1905).....	556
Choctaw freedmen	5,356
Chickasaw freedmen	4,564
Mississippi Choctaws	1,360
Total.....	35,348
* * * * *	

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CREEKS.

Page 42.

The percentage of cases where it has seemed almost impossible to obtain reliable evidence as to the rights of applicants is greatest in the Creek Nation. This is doubtless due to the fact that there is a larger proportion of freedmen and full-blood Indians who are densely ignorant as to their ancestors, and who keep no record of such events as marriage, birth, or death, and because there are so many different dates fatal to the rights of different classes of citizens, due to the opening of the rolls from time to time. Primarily, only those persons living on April 1, 1899, were entitled to be enrolled. The Creek agreement, ratified by Congress March 3, 1901, made provision for the enrollment of children born prior to July 1, 1900, and living on that date. A supplemental agreement, ratified by Congress June 30, 1902, made similar provision for those born subsequent to July 1, 1900, and living on May 25, 1901. The act of March 3, 1905, extended the right of enrollment to children born subsequent to May 25, 1901, and prior to March 4, 1905, and who were living on the latter date, and by the act of April 26, 1906, provision was also made for the enrollment of minor children living on March 4, 1906.

As the birth rate is greater among the ignorant and irresponsible classes, the difficulty in arriving at the date of birth or death increases proportionately. * * *

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The total number of applicants for enrollment as citizens of the Creek Nation, both Indians and freedmen, remaining to be disposed of by the Commissioner on June 30, 1906, was 2,018.

During the past fiscal year the claims of 67 persons for enrollment as citizens of the Creek Nation were presented to the Commissioner. These are, for the most part, the claims of persons alleging a right to enrollment, but where the records in charge of the Commissioner are conclusive as to the nonsubmission of an application within the time prescribed by law.

In addition to the original applications presented, hearings having been had in 137 cases, besides the testimony taken daily in the matter of the enrollment of children under the acts of March 3, 1905 and April 26, 1906. Indeed, there has been scarcely a day during the year when the rooms occupied by the Creek enrollment division were not filled with those seeking to introduce evidence in their own cases or to make application for the enrollment of children.

Decisions were rendered in 165 cases by the Commissioner disposing of the claims of 329 applicants, 124 of whom were enrolled and 205 denied. * * *

Page 53.

Creek Nation.

On June 30, 1906, the final roll of citizens and freedmen of the Creek Nation includes 17,692 names. Only 375 of these have thus far made no selection of lands, and only 220 others have incomplete allotments. However, it is likely that all of the land in the Creek Nation will be used in making allotments to all who may be finally enrolled, including the children entitled to enrollment under the act of April 26, 1906. * * *

Page 64.

Creek Nation.

Deeds covering all allotments in the Creek Nation had been issued before the beginning of this fiscal year, except where they were withheld for specific reasons and the work has been kept up with the allotment as nearly as possible.

There were prepared during the year 1,037 allotment and homestead deeds, all of which were executed by the principal chief, and 1,401 Creek allotment and homestead deeds have been approved by the Secretary of the Interior during the year.

Prior to the act of April 23, 1903, it was necessary that deeds covering the lands of deceased allottees be issued to the heirs of the deceased, and in cases where deeds had been issued before evidence of death was received it was necessary to recall them and issue new deeds to their heirs. For this reason 220 deeds were canceled during the past year and new deeds to the heirs deceased allottees issued in their stead.

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Excerpts from Report of the Commissioner to the Five Civilized Tribes Dated at Muskogee, Ind. T., June 30, 1907.

Page 17.

Creeks.

During the year ended June 30, 1907, 864 Creek Indians and 407 Creek freedmen, a total of 1,271 persons, have been enrolled as citizens of the Creek Nation. The names of 32 Creek Indians and 20 Creek freedmen have been eliminated from the approved rolls, under departmental authority, making the total number of persons eliminated from the Creek rolls 72 Creek Indians and 30 Creek freedmen, or 102 in all.

During the year there were received applications for the enrollment of 157 Creek minor children and 123 Creek freedmen minors, under the act of Congress approved April 23, 1903. None of the applications for the enrollment of minor children under the above act had been disposed of at the beginning of the present fiscal year, and these numbers.

in addition to those received during the fiscal year ended June 30, 1905, made a total of 546 minor Creek children and 411 minor Creek freedmen children, whose applications for enrollment must be determined prior to March 4, 1907.

During the first three months of the present year enrollment parties were in the field for the purpose of procuring additional data in enrollment cases; these parties were generally successful, but they reported increased difficulty from the Snake Indians and from ignorant and irresponsible classes. Much trouble has also been caused by the fraudulent claims that have been presented, but this state of affairs has already been fully detailed in previous reports.

During the year decisions were rendered by the Commissioner denying the claims of 1,417 persons to enrollment as Creek Indians and freedmen.

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Cancellation of Enrollment.

Enrollments Canceled in Accordance with Opinion of
Attorney General.

Choctaws	208
Chickasaws	19
Cherokees	9
Creek	14
Seminoles
Total	250

The following table shows the number of persons remaining on the rolls of the Five Civilized Tribes, as finally approved by the Secretary of the Interior June 30, 1907.

Persons on Roll of Five Civilized Tribes on June 30, 1907

Choctaws	18,981
Chickasaws	6,319
Choctaw freedmen.....	5,994
Chickasaw freedmen.....	4,670
Mississippi Choctaws.....	1,639

Cherokees (including Delawares and intermarried whites).....	36,874
Cherokee freedmen.....	4,924
Creek Indians.....	11,895
Creek freedmen.....	6,807
Seminole Indians.....	2,138
Seminole freedmen.....	986

Total	101,227
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Creek Nation.

There have been made, during the year (June 30, 1906 to June 30, 1907) 1,116 allotments, comprising 164,101.97 acres, leaving an area of 199,888.43 acres subject to allotment.

Of the 18,698 persons whose names appear upon the approved rolls of the Creek Nation, 17,702 citizens have completed their allotment selections 222 have still fractional selections to make, and 774 persons have not taken allotments. The names of 31 persons who had selected allotments and for which deeds have been recorded have been stricken from the approved rolls.

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Excerpts from Report of the Commissioner to the Five Civilized Tribes Dated at Muskogee, Oklahoma, June 30, 1908.

Page 17.

Creek Nation.

There were 1,802 Creek allotment deeds prepared during the year. The final roll of the Creek Nation contains 18,702 names, not including 102 names which have been stricken from the approved roll, 31 of whom have had deeds issued to them and which deeds have not been canceled.

There are 30 citizens on the approved roll who have made tentative filings on lands which have heretofore been allotted

to citizens whose names have since been stricken from the approved roll.

During the year there have been 648 allotment certificates and 418 homestead certificates prepared and mailed; and 1,526 reports have been made to the Indian Agent, showing age, degree of blood, and homestead and allotment selections.

While all allotments are practically completed, there remains a large amount of detail work to be done to complete the records, which will necessarily be slow and tedious.

There still remains a considerable number of disaffected Creeks who refuse to consent to the allotment of the tribal lands, as is evidenced by there having been returned to this office, 1,131 certificates, the majority of which were undoubtedly refused by the addressee or returned after delivery.

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